Supreme Court, U. S.
FILED
MAY 11 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 197_

NO. 78-1697

COMMONWEALTH OF PENNSYLVANIA,
PETITIONER

v.

KEVIN WILLIAMS,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO

THE SUPREME COURT OF PENNSYLVANIA

MARIANNE E. COX
ASSISTANT DISTRICT ATTORNEY

STEVEN H. GOLDBLATT
DEPUTY DISTRICT ATTORNEY FOR LAW

EDWARD G. RENDELL
DISTRICT ATTORNEY

2400 CENTRE SQUARE WEST
PHILADELPHIA, PENNSYLVANIA 19102

INDEX

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISION INVOLVED	3
STATUTORY PROVISION INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	8
I. THE EXCLUSIONARY RULE SHOULD NOT BE MANDATORILY APPLIED TO ALL FOURTH AMENDMENT VIOLATIONS, ESPECIALLY WHERE, AS HERE, THE VIOLATION IS TECHNICAL AND NOT BASED UPON KNOWING POLICE MISCONDUCT.	8-13
II. EVEN IF THE EXCLUSIONARY RULE IS APPLICABLE, RESPONDENT'S VOLUNTARY STATEMENT, MADE AT A STATION HOUSE AFTER HIS ARREST, SHOULD NOT BE DEEMED TAINTED BY THE ABSENCE OF AN ARREST WARRANT, WHERE THE ARREST WAS SUPPORTED BY MORE THAN AMPLE PROBABLE CAUSE, AND WAS NOT EFFECTUATED IN A MANNER CALCULATED TO CAUSE SURPRISE, FRIGHT AND CONFUSION, OR IN AN ATTEMPT TO DEVELOP INCRIMINATING EVIDENCE TO JUSTIFY THE ARREST.	14-17
III. THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION DOES NOT PROHIBIT A PEACEFUL PROBABLE CAUSE ARREST OF A FELON IN HIS HOME.	18-20
CONCLUSION	21

APPENDICES TO THE BRIEF

APPENDIX A: OPINION OF SUPREME COURT OF PENNSYLVANIA	1A-17A
APPENDIX B: ORDER OF THE SUPREME COURT OF PENNSYLVANIA DENYING PETITION FOR REARGUMENT	18A
APPENDIX C: OPINION OF COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY	19A-33A

TABLE OF CITATIONS

	PAGE
FEDERAL CASES:	
ALDERMAN v. UNITED STATES, 344 U.S. 165, 89 S. CT. 961 (1968)	13
ALMEIDA-SANCHEZ v. UNITED STATES, 413 U.S. 266, 93 S.CT. 2535 (1973)	10
BIVENS v. SIX UNKNOWN NAMED AGENTS OF THE F.B.I., 403 U.S. 388, 91 S.CT. 1999 (1971)	11,17
BROWN v. ILLINOIS, 422 U.S. 590, 95 S.CT. 2254 (1975)	14,15,16,17
COOLIDGE v. NEW HAMPSHIRE, 403 U.S. 443, 91 S.CT. 2022 (1971), REHEARING DENIED, 404 U.S. 874, 92 S.CT. 26 (1971)	19
GERSTEIN v. PUGH, 420 U.S. 103, 95 S.CT. 854 (1975)	19
KER v. CALIFORNIA, 374 U.S. 23, 83 S.CT. 1623 (1963)	19
MAPP v. OHIO, 367 U.S. 643, 81 S.CT. 1684 (1961)	10
STONE v. POWELL, 428 U.S. 465, 96 S.CT. 3037 (1976), REHEARING DENIED, 429 U.S. 874, 97 S.CT. 197 (1976)	9,10,11,12,13
UNITED STATES v. CALANDRA, 414 U.S. 338, 94 S.CT. 613 (1974)	13

	PAGE
FEDERAL CASES:	
UNITED STATES v. CECCOLINI, 435 U.S. 268, 98 S.CT. 1054 (1978)	12,13
UNITED STATES v. JANIS, 428 U.S. 433, 96 S.CT. 3021 (1976), REHEARING DENIED, 429 U.S. 874, 97 S.CT. 196 (1976)	9,10,13
UNITED STATES v. PELTIER, 422 U.S. 531, 95 S.CT. 2313 (1975)	9,10
UNITED STATES v. WATSON, 423 U.S. 411, 96 S.CT. 820 (1976), REHEARING DENIED, 424 U.S. 979, 96 S.CT. 1488 (1976)	18,19
WALDER v. UNITED STATES, 347 U.S. 62, 74 S.CT. 354 (1964)	13
WARDEN v. HAYDEN, 387 U.S. 294, 87 S.CT. 1642 (1967)	19
PENNSYLVANIA CASES:	
COMMONWEALTH v. CARTER, 444 PA. 405, 282 A.2D 375 (1971)	9
COMMONWEALTH v. FLADGER, ___ PA. SUPERIOR CT. ___, 398 A.2D 707 (1979)	18
COMMONWEALTH v. JACKSON, 450 PA. 113, 299 A.2D 213 (1973)	9

PAGE

PENNSYLVANIA CASES:

COMMONWEALTH V. WILLIAMS, ___ PA. ___, 396 A.2D 1177 (1978) 8

OTHER CASES:

PAYTON V. NEW YORK, RIDDICK V. NEW YORK, 45 N.Y.2D 300, 380 N.E.2D 224 (1978), PROB. JURIS. NOTED, 47 U.S.L.W. 3408 (1978) (Nos. 78-5420, 78-5421) 8,20

CONSTITUTIONAL AND STATUTORY PROVISIONS:

UNITED STATES CONSTITUTION, AMENDMENT IV PASSIM

PA. R. CRIM. P., RULE 101, PA. STAT. ANN. TIT. 19 (SUPP. 1978) 9

OTHER AUTHORITIES:

ALI, A MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, §§120.1 AND 120.6 NOTE AND COMMENTARY (OFFICIAL DRAFT, 1972) 18

ALI, A MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, §2902 (MAY 20, 1975) 12

H. FRIENDLY, BENCHMARKS (1967) 12

8 J. WIGMORE, EVIDENCE, §2184 (MCNAUGHTON ED. 1971) 12

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 197_

NO. ____

COMMONWEALTH OF PENNSYLVANIA,
PETITIONER

v.

KEVIN WILLIAMS,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO

THE SUPREME COURT OF PENNSYLVANIA

THE PETITIONER, THE COMMONWEALTH OF PENNSYLVANIA, RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT AND OPINION OF THE PENNSYLVANIA SUPREME COURT, DATED NOVEMBER 17, 1978, IN THE ABOVE-CAPTIONED CASE.

OPINIONS BELOW

THE OPINION OF THE PENNSYLVANIA SUPREME COURT, WHICH IS UNOFFICIALLY REPORTED AT 396 A.2D 1177 (1978), IS SET OUT IN THE APPENDIX. (THIS OPINION HAS NOT YET BEEN REPORTED IN THE OFFICIAL STATE REPORTS). ALSO INCLUDED IN THE APPENDIX IS THE OPINION OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY.

JURISDICTION

THE ORDER OF THE PENNSYLVANIA SUPREME COURT WAS ENTERED NOVEMBER 28, 1978.[1] A TIMELY APPLICATION FOR REARGUMENT, WHICH WAS THEREAFTER FILED BY PETITIONER, WAS DENIED ON FEBRUARY 12, 1979. THIS PETITION FOR CERTIORARI WAS FILED WITHIN NINETY (90) DAYS OF THAT DENIAL. THE JURISDICTION OF THIS COURT IS INVOKED PURSUANT TO 28. U.S.C. §1254(1).

QUESTIONS PRESENTED

SHOULD THE EXCLUSIONARY RULE BE MECHANICALLY APPLIED TO EXCLUDE RFSPONDENT'S VOLUNTARY AND RELIABLE STATEMENT, SOLELY BECAUSE HIS ARREST WAS IN TECHNICAL VIOLATION OF A LATER ANNOUNCED ARREST WARRANT REQUIREMENT, WHERE THE ARREST WAS BASED ON PROBABLE CAUSE, AND WHERE APPLICATION OF THE EXCLUSIONARY RULE WILL NEITHER DETER ILLEGAL POLICE ACTION, NOR PRESERVE JUDICIAL INTEGRITY?

SHOULD RESPONDENT'S STATEMENT BE DEEMED TAINTED SOLELY BECAUSE THE POLICE FAILED TO OBTAIN AN ARREST WARRANT WHICH WAS NOT REQUIRED AT THE TIME?

IS THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION VIOLATED BY A PEACEFUL WARRANTLESS FELONY ARREST IN A DWELLING, WHERE THE ENTRY WAS CONSENTUAL, AND THE ARREST IS SUPPORTED BY MORE THAN ADEQUATE PROBABLE CAUSE?

---

1. RESPONDENT'S CONVICTION WAS REVERSED BY THE PENNSYLVANIA SUPREME COURT IN AN OPINION DATED NOVEMBER 18, 1978. HOWEVER, THE OPINION WAS NOT RELEASED, NOR THE ORDER OF THE COURT OFFICIALLY ENTERED, UNTIL NOVEMBER 28, 1978.

CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT FOUR.

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

STATUTORY PROVISION INVOLVED

PA. R. CRIM. P., RULE 101, PA. STAT. ANN. TIT. 19 (SUPP. 1978)

RULE 101. MEANS OF INSTITUTING PROCEEDINGS IN COURT CASES.

CRIMINAL PROCEEDINGS IN COURT CASES SHALL BE INSTITUTED BY:

1. A WRITTEN COMPLAINT; OR

2. AN ARREST WITHOUT A WARRANT WHEN THE OFFENSE IS A FELONY OR MISDEMEANOR COMMITTED IN THE PRESENCE OF THE POLICE OFFICER MAKING THE ARREST; OR

3. AN ARREST WITHOUT A WARRANT UPON PROBABLE CAUSE WHEN THE OFFENSE IS A FELONY, OR

4. AN ARREST WITHOUT A WARRANT UPON PROBABLE CAUSE WHEN THE OFFENSE IS A MISDEMEANOR NOT COMMITTED IN THE PRESENCE OF THE POLICE OFFICER MAKING THE ARREST, WHEN SUCH ARREST WITHOUT A WARRANT IS SPECIFICALLY AUTHORIZED BY STATUTE.

STATEMENT OF THE CASE

PROCEDURAL HISTORY:

RESPONDENT, KEVIN WILLIAMS, WAS CHARGED IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, AS OF SEPTEMBER SESSIONS, 1975, NOS. 1675 AND 1676, WITH MURDER AND WITH VIOLATING THE UNIFORM FIREARM ACT. THESE CHARGES AROSE OUT OF THE SHOTGUN SLAYING OF TWENTY-ONE YEAR OLD JAMES SPINKS.

A PRE-TRIAL MOTION TO SUPPRESS A WRITTEN STATEMENT WAS HEARD AND DENIED BY THE HONORABLE ARMAND DELLA PORTA ON NOVEMBER 21, 1975. TRIAL WAS HELD BEFORE THE HONORABLE THEODORE B. SMITH AND A JURY ON MARCH 15 THROUGH MARCH 19, 1976. RESPONDENT WAS FOUND GUILTY OF FIRST DEGREE MURDER.[2] ON JUNE 22, 1976, FOLLOWING THE DENIAL OF POST-VERDICT MOTIONS, A SENTENCE OF LIFE IMPRISONMENT WAS IMPOSED.

RESPONDENT FILED A DIRECT APPEAL TO THE SUPREME COURT OF PENNSYLVANIA WHICH ON NOVEMBER 18, 1979, REVERSED RESPONDENT'S MURDER CONVICTION ON THE GROUND THAT RESPONDENT'S WARRANTLESS ARREST IN HIS HOME WAS VIOLATIVE OF THE FOURTH AMENDMENT OF THE

---

2. BILL NO. 1676, CHARGING VIOLATION OF THE UNIFORM FIREARMS ACT, WAS NOLLE PROSSED AT THE TIME OF TRIAL.

UNITED STATES CONSTITUTION, AND THAT HIS STATEMENT, MADE AT THE STATION HOUSE ONE HALF HOUR AFTER HIS ARREST, WAS TAINTED BY THE ARREST. COMMONWEALTH V. WILLIAMS, ___ PA. ___, 396 A.2D 1177 (1978). (APPENDIX, INFRA AT 1A). AN APPLICATION FOR REARGUMENT, WHICH WAS FILED BY THE COMMONWEALTH ON DECEMBER 12, 1978, WAS DENIED ON FEBRUARY 12, 1979.

FACTUAL HISTORY:

ON SEPTEMBER 30, 1972, BETWEEN 9:00 P.M. AND 10:00 P.M., THE DECEDENT, TWENTY-ONE YEAR OLD JAMES SPINKS, WAS WALKING DOWN A PHILADELPHIA STREET IN THE COMPANY OF JAMES NORWOOD. WITHOUT PROVOCATION, RESPONDENT, KEVIN WILLIAMS, SHOT SPINKS FROM THE REAR WITH A .22 CALIBER RIFLE.

RESPONDENT'S IDENTITY AS THE MURDERER OF JAMES SPINKS REMAINED UNKNOWN TO THE POLICE FOR ALMOST THREE YEARS. ON SEPTEMBER 6, 1975, AN ACQUAINTANCE OF RESPONDENT'S, SHELLY KNOX, WAS BEING INTERVIEWED BY THE PHILADELPHIA POLICE AS A CONSEQUENCE OF HIS ARREST FOR AN UNRELATED CRIME. DURING THE COURSE OF THIS INTERVIEW, KNOX RELATED THAT ON OCTOBER 1, 1972, THE DAY AFTER SPINKS' MURDER, RESPONDENT TOLD HIM THAT HE KILLED SPINKS WITH A .22 CALIBER RIFLE, AND THAT JAMES DAVIS WAS LATER ARRESTED FOR POSSESSION OF THE

RIFLE USED IN THE KILLING (N.T. SUPP. HRG. 9-10).

THE INTERVIEWING DETECTIVE, ROBERT KANE, THEN ASCERTAINED FROM POLICE RECORDS THAT JAMES DAVIS WAS IN FACT ARRESTED ON THE DATE IN QUESTION, IN POSSESSION OF A .22 CALIBER RIFLE, AND THAT DECEDENT DIED AS A RESULT OF A BULLET FIRED FROM A .22 CALIBER WEAPON[3] (N.T. SUPP. HRG. 7-12).

ON SEPTEMBER 7, 1975, THE MORNING FOLLOWING THE STATEMENT MADE BY KNOX, DETECTIVE KANE ARRESTED RESPONDENT AT HIS HOME AFTER A PEACEFUL CONSENTUAL ENTRY. RESPONDENT WAS TAKEN TO THE POLICE ADMINISTRATION BUILDING, AND WITHIN MOMENTS OF HIS ARRIVAL, HE WAS ADVISED OF HIS CONSTITUTIONAL RIGHTS; RESPONDENT WAIVED HIS RIGHTS AND MADE A STATEMENT IN WHICH HE RELATED THAT HE STOLE A RIFLE FROM THE TRUNK OF AN AUTOMOBILE, AND THEN, WITHOUT ANY REASON, FIRED IT AT TWO BOYS WALKING DOWN THE STREET, WHOM HE THOUGHT HE DID NOT KNOW. HE STATED THAT THE NEXT DAY HE LEARNED THAT HE WAS IN FACT ACQUAINTED WITH THE BOY HE HAD KILLED (N.T. TRIAL 283-293).

---

3. A SUBSEQUENT BALLISTICS EXAMINATION CONDUCTED AFTER RESPONDENT'S ARREST ESTABLISHED THAT THE FATAL BULLET WAS FIRED FROM THE GUN SEIZED FROM JAMES DAVIS (N.T. SUPP. HRG. 11-12).

REASONS FOR GRANTING THE WRIT

I. THE EXCLUSIONARY RULE SHOULD NOT BE MANDATORIALLY APPLIED TO ALL FOURTH AMENDMENT VIOLATIONS, ESPECIALLY WHERE, AS HERE, THE VIOLATION IS TECHNICAL AND NOT BASED UPON KNOWING POLICE MISCONDUCT.

IN THIS CASE, THE PENNSYLVANIA SUPREME COURT HELD THAT THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRES, IN THE ABSENCE OF EXIGENT CIRCUMSTANCES, THAT LAW ENFORCEMENT OFFICIALS OBTAIN AN ARREST WARRANT PRIOR TO MAKING A PROBABLE CAUSE FELONY ARREST IN A HOME.[1] THIS COURT HAS NOTED PROBABLE JURISDICTION IN TWO OTHER CASES RAISING THIS ISSUE, PAYTON V. NEW YORK, RIDDICK V. NEW YORK, 45 N.Y.2D 300, 380 N.E. 2D 224 (1978), PROB. JURIS. NOTED, 47 U.S.L.W. 3408 (1978) (Nos. 78-5420, 78-5421). ALTHOUGH THE COMMONWEALTH SUBMITS THAT AN ARREST WARRANT IS NOT CONSTITUTIONALLY MANDATED UNDER SUCH CIRCUMSTANCES (SEE ARGUMENT III INFRA), EQUALLY IMPORTANT QUESTIONS ARE PRESENTED IN THE INSTANT CASE, WHICH THIS COURT HAS NEVER HAD THE OPPORTUNITY TO DIRECTLY CONSIDER.

---

1. THE PENNSYLVANIA SUPREME COURT IN ITS HOLDING RELIED SOLELY ON THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION. COMMONWEALTH V. WILLIAMS, APPENDIX AT 14.

THE FIRST IS WHETHER, EVEN ASSUMING A TECHNICAL FOURTH AMENDMENT VIOLATION, THE EXCLUSIONARY RULE SHOULD BE MECHANICALLY APPLIED TO EXCLUDE RELIABLE AND PROBATIVE EVIDENCE, OBTAINED BY LAW ENFORCEMENT OFFICERS ACTING REASONABLY AND IN GOOD FAITH, WHERE EXCLUSION OF THE EVIDENCE WILL NEITHER DETER UNLAWFUL POLICE ACTIVITY, NOR OFFEND THE CONCEPT OF JUDICIAL INTEGRITY.

WHATEVER BENEFITS THE EXCLUSIONARY RULE HAS IN DETERRING LAW ENFORCEMENT OFFICERS FROM ACTING IN FLAGRANT VIOLATION OF THE CONSTITUTION, OR ASSURING THAT THE COURTS DO NOT APPEAR TO BE COLLABORATING IN ILLEGAL POLICE CONDUCT, NEITHER OF THESE GOALS IS SERVED WHERE THE POLICE ACT IN FULL COMPLIANCE WITH EXISTING LEGAL STANDARDS.[2] UNITED STATES V. JANIS, 428 U.S. 433, 454, N.28, 458, N.35, 96 S. CT. 3021, 3032, N.28, 3034, N.35, REHEARING DENIED, 429 U.S. 874, 97 S. CT. 196 (1976); STONE V. POWELL, 428 U.S. 465, 485, N.23, 96 S. CT. 3037, 3048 (1976), REHEARING DENIED, 429 U.S. 874, 97 S. CT. 197 (1976); UNITED STATES V. PELTIER, 422 U.S. 531, 538, 95 S. CT.

---

2. IN THIS CASE, THE ARRESTING OFFICERS ACTED IN FULL COMPLIANCE WITH THE RULES OF CRIMINAL PROCEDURE PROMULGATED BY THE PENNSYLVANIA SUPREME COURT, AS WELL AS EXISTING CASE LAWS, AUTHORIZING WARRANTLESS ARRESTS FOR FELONIES. PA. R. CRIM. P. 101; PA. STAT. ANN. TIT. 19 (SUPP. 1978); COMMONWEALTH V. JACKSON, 450 PA. 113, 299 A.2D 213 (1973); COMMONWEALTH V. CARTER, 444 PA. 405, 282 A.2D 375 (1971). NO VIOLATION OF STATE LAW OR THE STATE CONSTITUTION WAS FOUND IN THIS CASE BY THE PENNSYLVANIA SUPREME COURT.

2313, 2317-2318 (1975). THE EXCLUSIONARY RULE IS NOT A PERSONAL RIGHT OF A CRIMINAL DEFENDANT,[3] BUT IT IS A JUDICIALLY CREATED REMEDY, FORMULATED BY THIS COURT[4] TO DETER FLAGRANT VIOLATIONS OF THE CONSTITUTION. STONE V. POWELL, SUPRA AT 482-486, 96 S. CT. AT 3046-3049. IT IS A DRASTIC DEVICE WITH TREMENDOUS SOCIAL COSTS, AS THE RULE, OF NECESSITY, ALLOWS COUNTLESS GUILTY DEFENDANTS TO GO UNPUNISHED, AND KEEPS RELIABLE AND PROBATIVE EVIDENCE FROM THE FACTFINDER. UNITED STATES V. JANIS, SUPRA AT 448-449, 96 S. CT. AT 3029-3030; STONE V. POWELL, SUPRA AT 487-489, 96 S. CT. AT 3049-3050. SOUND ADMINISTRATION OF JUSTICE

---

3. EVEN ASSUMING THAT AN ARREST WARRANT IS CONSTITUTIONALLY MANDATED, GIVING THE RESPONDENT THE BENEFIT OF THE RULE CHANGE IN HIS CASE, DOES NOT AUTOMATICALLY RESULT IN REVERSAL OF HIS MURDER CONVICTION. ONCE RESPONDENT'S ARREST IS DECLARED "ILLEGAL" UNDER THE RULE CHANGE, CONSIDERATION MUST THEN BE GIVEN TO WHETHER THE EXCLUSIONARY RULE SHOULD BE INVOKED, AND IF SO, WHAT EVIDENCE IS TAINTED BY THE "ILLEGALITY". ALTHOUGH THIS COURT IN ALMEIDA-SANCHEZ V. UNITED STATES, 413 U.S. 266, 93 S. CT. 2535 (1973) APPLIED BOTH THE RULE CHANGE AND THE EXCLUSIONARY RULE TO ALMEIDA-SANCHEZ, THAT CASE IS NOT RELEVANT HERE, BECAUSE AS THE COURT SUBSEQUENTLY NOTED IN UNITED STATES V. PELTIER, 422 U.S. 531, 542, 95 S. CT. 2313, 2320 N. 12 (1975), THE GOVERNMENT IN ALMEIDA-SANCHEZ NEVER ARGUED THAT THE EXCLUSIONARY RULE SHOULD NOT APPLY.

4. IN MAPP THIS COURT SOUGHT

> TO CLOSE THE ONLY COURTROOM DOOR REMAINING OPEN TO EVIDENCE SECURED BY OFFICIAL LAWLESSNESS IN FLAGRANT ABUSE OF THE CONSTITUTION.

MAPP V. OHIO, 367 U.S. 643, 654-655, 81 S. CT. 1684, 1691-1692 (1961).

MANDATES THAT THE EXCLUSIONARY RULE BE INVOKED ONLY WHERE IT WILL SERVE ITS STATED PURPOSE. PROBATIVE AND RELIABLE EVIDENCE SHOULD BE WITHHELD FROM THE FACTFINDER ONLY WHERE POLICE OFFICERS ACT IN FLAGRANT DISREGARD OF CONSTITUTIONAL REQUIREMENTS. INADVERTANT ERRORS SHOULD NOT BE TREATED THE SAME AS A FLAGRANT VIOLATION OF RIGHTS. ALL TOO OFTEN FOURTH AMENDMENT DECISIONS HINGE ON COMPLEX LEGAL ANALYSES, WITH COURTS THEMSELVES SHARPLY DIVIDED OVER THE APPROPRIATE CONSTITUTIONAL RESULT. WHILE FEW LAWYERS CAN CLAIM TRUE EXPERTISE IN THE FOURTH AMENDMENT, WE EXPECT POLICE OFFICERS, FACED WITH SPLIT SECOND DECISIONS, TO MASTER IT.[5] SUCH AN EXPECTATION IS CLEARLY UNREASONABLE.

AS THIS COURT HAS RECOGNIZED,

> [A]PPLICATION OF THE [E]XCLUSIONARY RULE DEFLECTS THE TRUTHFINDING PROCESS AND OFTEN FREES THE GUILTY. THE DISPARITY IN PARTICULAR CASES

---

5. SEE E.G., STONE V. POWELL, SUPRA AT 540, 96 S. CT. AT 3073 (WHITE, J., DISSENTING) ("SURELY WHEN THIS COURT DIVIDES FIVE TO FOUR ON ISSUES OF PROBABLE CAUSE, IT IS NOT TENABLE TO CONCLUDE THAT THE OFFICER WAS AT FAULT OR ACTED UNREASONABLY IN MAKING THE ARREST."); BIVENS V. SIX UNKNOWN NAMED AGENTS OF THE FBI, 403 U.S. 388, 417, 91 S. CT. 1999, 2015 N.4, (1971) (BURGER, C.J., DISSENTING) (OBSERVING THAT WHERE THIS COURT REVERSES, BY A NARROW MARGIN, DECISIONS OF STATE AND FEDERAL JUDGES, AS MUCH AS 10 YEARS AFTER THE FACT," IT IS DIFFICULT TO CONCLUDE THAT THE POLICEMAN HAS VIOLATED SOME RULE THAT HE SHOULD HAVE KNOWN WAS A RESTRICTION ON HIS AUTHORITY".)

> BETWEEN THE ERROR COMMITTED BY THE POLICE OFFICER AND THE WINDFALL AFFORDED A GUILTY DEFENDANT BY APPLICATION OF THE RULE IS CONTRARY TO THE IDEA OF PROPORTIONALITY THAT IS ESSENTIAL TO THE CONCEPT OF JUSTICE. [FOOTNOTE 29]16 THUS, ALTHOUGH THE RULE IS THOUGHT TO DETER UNLAWFULE POLICE ACTIVITY IN PART THROUGH THE NURTURING OF RESPECT FOR FOURTH AMENDMENT VALUES, IF APPLIED INDISCRIMINATELY IT MAY WELL HAVE THE OPPOSITE EFFECT OF GENERATING DISRESPECT FOR THE LAW AND ADMINISTRATION OF JUSTICE.

STONE V. POWELL, SUPRA AT 490-491, 96 S. CT. AT 3050-3051.

REVIEW IS REQUESTED BECAUSE THE EXCLUSION OF EVIDENCE SHOULD NOT BE COMPELLED WHEN THE FOURTH AMENDMENT VIOLATION IS TECHNICAL AND THE VIOLATION COULD NOT

---

6. THE COURT NOTED:

> 29. MANY OF THE PROPOSALS FOR MODIFICATION OF THE SCOPE OF THE EXCLUSIONARY RULE RECOGNIZE AT LEAST IMPLICITLY THE ROLE OF PROPORTIONALITY IN THE CRIMINAL JUSTICE SYSTEM AND THE POTENTIAL VALUE OF ESTABLISHING A DIRECT RELATIONSHIP BETWEEN THE NATURE OF THE VIOLATION AND THE DECISION WHETHER TO INVOKE THE RULE. SEE A.L.I., A MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, MAY 20, 1975, §290[illegible], AT 181-183 ("SUBSTANTIAL VIOLATIONS"); H. FRIENDLY, BENCHMARKS 260-262 (1967) (EVEN AT TRIAL, EXCLUSION SHOULD BE LIMITED TO "THE FRUIT OF ACTIVITY INTENTIONALLY OR FLAGRANTLY ILLEGAL"); [8] WIGMORE, SUPRA, [§2184] N.26, AT 52-53 [MCNAUGHTON ED. 1971]: . . .

STONE V. POWELL, SUPRA AT 490-491, 96 S. CT. AT 3050-3051 (EMPHASIS SUPPLIED). SEE ALSO UNITED STATES V. CECCOLINI, 435 U.S. 268, 98 S. CT. 1054, 1061-1062 (1978).

REASONABLY BE ANTICIPATED BY A POLICE OFFICER. THIS WILL NOT DEPRECIATE THE IMPORTANCE OF THE FOURTH AMENDMENT,[7] RATHER IT WILL SIMPLY RECOGNIZE THAT INADVERTANT AND TECHNICAL ERRORS BY LAW ENFORCEMENT OFFICIALS DO NOT ENTITLE A DEFENDANT TO THE DRASTIC RELIEF OF EXCLUDING PROBATIVE AND RELIABLE EVIDENCE OF HIS GUILT.

---

7. IN SETTING THE LIMITS OF THE EXCLUSIONARY RULE, THIS COURT HAS RECENTLY APPLIED A BALANCING APPROACH, WEIGHING THE DETERRENT VALUE OF EXTENDING THE RULE AGAINST THE SOCIAL COSTS OF FREEING GUILTY DEFENDANTS THROUGH THE EXCLUSION OF PROBATIVE EVIDENCE. SEE, E.G. UNITED STATES V. CECCOLINI, SUPRA, 98 S. CT. AT 1062 (DECLINING TO APPLY THE EXCLUSIONARY RULE TO EXCLUDE THE TESTIMONY OF A WITNESS FOUND AS A RESULT OF AN ILLEGAL SEARCH, BECAUSE THE SOCIAL COST OF PERMANENTLY SILENCING THE WITNESS "IS TOO GREAT FOR AN EVEN-HANDED SYSTEM OF LAW ENFORCEMENT TO BEAR IN ORDER TO SECURE . . . A SPECULATIVE AND VERY LIKELY NEGLIGIBLE DETERRENT EFFECT."); UNITED STATES V. JANIS, SUPRA AT 453-454 96 S. CT. AT 3031-3032 (HOLDING THAT THE RULE WILL NOT BE EXTENDED TO A FEDERAL CIVIL PROCEEDING TO EXCLUDE EVIDENCE OBTAINED BY STATE OFFICERS WHERE THE DETERRENT EFFECT WOULD BE "MARGINAL"); STONE V. POWELL, SUPRA AT 495-496, 96 S. CT. AT 3052-3053 (HOLDING THAT EXCLUSIONARY RULE IS NOT APPLICABLE IN HABEAS REVIEW OF STATE CONVICTIONS WHERE DETERRENT EFFECT WOULD BE "MINIMAL"). UNITED STATES V. CALANDRA, 414 U.S. 338, 94 S. CT. 613 (1974) (HOLDING THAT EXCLUSIONARY RULE IS NOT APPLICABLE TO GRAND JURY PROCEEDINGS TO ACHIEVE SPECULATIVE AND MINIMAL DETERRENCE). ALDERMAN V. UNITED STATES, 344 U.S. 165, 89 S. CT. 961 (1968) (DECLINING TO EXTEND APPLICATION OF THE EXCLUSIONARY RULE TO SUPPRESS EVIDENCE OBTAINED IN VIOLATION OF A CO-DEFENDANT'S RIGHTS, BECAUSE THE ADDITIONAL DETERRENT VALUE OF SUCH EXTENSION WOULD NOT JUSTIFY THE SUBSTANTIAL COST OF EXCLUDING RELEVANT EVIDENCE FROM THE FACT-FINDER.) SEE, WALDER V. UNITED STATES, 347 U.S. 62, 74 S. CT. 354 (1964) (HOLDING THAT EXCLUSIONARY RULE DOES NOT BAR FEDERAL PROSECUTORS FROM USING ILLEGALLY OBTAINED EVIDENCE TO IMPEACH A DEFENDANT'S PERJURIOUS TESTIMONY AT TRIAL).

II. EVEN IF THE EXCLUSIONARY RULE IS APPLICABLE, RESPONDENT'S VOLUNTARY STATEMENT, MADE AT A STATION HOUSE AFTER HIS ARREST, SHOULD NOT BE DEEMED TAINTED BY THE ABSENCE OF AN ARREST WARRANT, WHERE THE ARREST WAS SUPPORTED BY MORE THAN AMPLE PROBABLE CAUSE, AND WAS NOT EFFECTUATED IN A MANNER CALCULATED TO CAUSE SURPRISE, FRIGHT AND CONFUSION, OR IN AN ATTEMPT TO DEVELOP INCRIMINATING EVIDENCE TO JUSTIFY THE ARREST.

WHETHER OR NOT THE EXCLUSIONARY RULE IS APPLICABLE, THERE IS NO NEXUS IN THIS CASE BETWEEN RESPONDENT'S ARREST AND STATEMENT. IT IS WELL-SETTLED THAT A STATEMENT MADE AFTER AN ILLEGAL ARREST IS NOT PER SE INADMISSIBLE. BROWN V. ILLINOIS, 422 U.S. 590, 95 S. CT. 2254 (1975). IT IS ONLY WHEN THE STATEMENT IS CAUSALLY RELATED TO THE INVASION OF DEFENDANT'S RIGHTS THAT THE STATEMENT WILL BE DEEMED TAINTED BY THE ILLEGALITY. HERE, THERE IS NO CAUSAL RELATIONSHIP. UNLIKE THE TYPICAL ILLEGAL ARREST CASE, RESPONDENT HERE WAS NOT, UPON LESS THAN PROBABLE CAUSE, DEPRIVED OF HIS FREEDOM OF ACTION, AND THEN ILLEGALLY DETAINED IN AN ATTEMPT TO DEVELOP INCRIMINATING EVIDENCE TO JUSTIFY THE ARREST. RESPONDENT'S ARREST WAS SUPPORTED BY MORE THAN SUFFICIENT PROBABLE CAUSE, AND WAS NOT EFFECTUATED IN A MANNER "CALCULATED TO CAUSE SURPRISE, FRIGHT AND CONFUSION." COMPARE BROWN V. ILLINOIS, SUPRA AT 605, 95 S. CT. AT

2262-2263. HERE THE POLICE KNEW THAT RESPONDENT HAD ADMITTED THE MURDER BEFORE THEY ARRESTED HIM. (N.T. SUPP. HRG. 9-10).

IN BROWN THIS COURT ARTICULATED FOUR FACTORS THAT MUST BE SCRUTINIZED IN DETERMINING WHETHER A NEXUS EXISTS BETWEEN THE CHALLENGED EVIDENCE AND THE INITIAL ILLEGALITY. THE COURT NOTED:

> THE QUESTION WHETHER A CONFESSION IS THE PRODUCT OF A FREE WILL UNDER WONG SUN MUST BE ANSWERED ON THE FACTS OF EACH CASE. NO SINGLE FACT IS DISPOSITIVE. THE WORKINGS OF THE HUMAN MIND ARE TOO COMPLEX AND THE POSSIBILITIES OF MISCONDUCT TOO DIVERSE, TO PERMIT PROTECTION OF THE FOURTH AMENDMENT TO TURN ON SUCH A TALISMANIC TEST. THE MIRANDA WARNINGS ARE AN IMPORTANT FACTOR, TO BE SURE, IN DETERMINING WHETHER THE CONFESSION IS OBTAINED BY EXPLOITATION OR AND ILLEGAL ARREST. BUT THEY ARE NOT THE ONLY FACTOR TO BE CONSIDERED. THE TEMPORAL PROXIMITY OF THE ARREST AND THE CONFESSION, THE PRESENCE OF INTERVENING CIRCUMSTANCES . . ., AND, PARTICULARLY, THE PURPOSE AND FLAGRANCY OF THE OFFICIAL MISCONDUCT ARE ALL RELEVANT . . . . THE VOLUNTARINESS OF THE STATEMENT IS A THRESHOLD REQUIREMENT.

422 U.S. AT 603-604, 95 S. CT. AT 2261, 2262 (EMPHASIS SUPPLIED) (FOOTNOTES OMITTED).

NONETHELESS, THE PENNSYLVANIA SUPREME COURT IN THIS CASE CONSIDERED BUT ONE FACTOR, I.E., THE TEMPORAL PROXIMITY OF RESPONDENT'S ARREST AND STATEMENT, AND SUMMARILY CONCLUDED THAT BECAUSE RESPONDENT MADE A STATEMENT WITHIN ONE-HALF HOUR OF HIS ARRIVAL AT THE POLICE ADMINISTRATION BUILDING, HIS STATEMENT WAS TAINTED BY HIS ARREST. BY PROCEEDING AS THOUGH TEMPORAL PROXIMITY WAS CONTROLLING, THE COURT INCORRECTLY APPLIED THE TAINT TEST OF BROWN, AND IGNORED THE VOLUNTARINESS OF RESPONDENT'S STATEMENT,[8] THE PRESENCE OF INTERVENING CIRCUMSTANCES, AND THE FACT THAT RESPONDENT WAS FULLY ADVISED OF HIS CONSTITUTIONAL RIGHTS. MORE IMPORTANTLY, THE COURT GAVE NO CONSIDERATION TO THE MOST CRITICAL FACTOR OF ALL, THE "PURPOSE AND FLAGRANCY OF THE OFFICIAL MISCONDUCT"; AS INDICATED ABOVE, THERE WAS NO OFFICIAL MISCONDUCT IN THIS CASE.

THE POINT AT WHICH TAINT WILL DISSIPATE IS DIRECTLY DEPENDENT UPON THE NATURE OF THE FOURTH AMENDMENT VIOLATION, THAT IS, THE OFFICIAL MISCONDUCT.

---

8. INTERVENING CIRCUMSTANCES CAN BE SEEN IN REVIEWING THE PREFATORY REMARKS OF THE DETECTIVE WHO INTERVIEWED RESPONDENT. AFTER RESPONDENT WAS ADVISED OF AND WAIVED HIS MIRANDA RIGHTS, DETECTIVE KANE TOLD HIM THAT THE POLICE KNEW THAT HE WAS RESPONSIBLE FOR THE MURDER. THE DETECTIVE TOLD RESPONDENT THAT HE "KNEW WHAT WENT DOWN", AND THAT IF HE WERE GOING TO MAKE A STATEMENT, THERE WAS NO SENSE IN FABRICATING A STORY. RESPONDENT THEN PROCEEDED TO MAKE A FULL INCULPATORY STATEMENT (N.T. SUPP. HRG. 22-23).

CIRCUMSTANCES REQUIRING THE STRONGEST EVIDENCE OF ATTENUATION OF TAINT ARE CASES WHERE LAW ENFORCEMENT OFFICIALS ACT IN FLAGRANT DISREGARD OF THE FOURTH AMENDMENT. BROWN V. ILLINOIS, SUPRA AT 610-612, 95 S. CT. AT 2265-2266 (POWELL AND REHNQUIST, J., CONCURRING). AT THE OTHER END OF THE SPECTRUM WOULD BE CASES WHERE THE POLICE IN GOOD FAITH RELY UPON A WARRANT THAT IS TECHNICALLY INVALID. ID. SEE ALSO BIVINS, SUPRA AT 418-420, 91 S. CT. AT 2015-2017 (BURGER, C.J., DISSENTING) (NOTING THAT THE EXCLUSIONARY RULE TREATS VASTLY DISSIMILAR CASES AS THOUGH THEY WERE THE SAME). INDEED, THE INSTANT CASE IS EVEN MORE COMPELLING, IN THAT THE POLICE ACTED IN GOOD FAITH RELIANCE UPON EXISTING CASE LAW AND A COURT CREATED RULE OF PROCEDURE WHICH WAS ONLY LATER INVALIDATED. THESE CIRCUMSTANCES ALONE NEGATE THE EXISTENCE OF ANY TAINT.

THE COMMONWEALTH RESPECTFULLY REQUESTS THE GRANT OF CERTIORARI TO DEMONSTRATE THAT EVEN IF THE EXCLUSIONARY RULE IS APPLICABLE WHERE THE POLICE ACT IN GOOD FAITH, FAILURE OF THE POLICE TO OBTAIN A PIECE OF PAPER, THAT WAS NOT REQUIRED AT THE TIME, DID NOT TAINT RESPONDENT'S VOLUNTARY STATEMENT AS A MATTER OF FEDERAL CONSTITUTIONAL LAW.

III. THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION DOES NOT PROHIBIT A PEACEFUL PROBABLE CAUSE ARREST OF A FELON IN HIS HOME.

THE PENNSYLVANIA SUPREME COURT, WITHOUT ANALYSIS OF EITHER THE LANGUAGE OR PURPOSE OF THE FOURTH AMENDMENT, HELD THAT THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION MANDATES THAT LAW ENFORCEMENT OFFICIALS, IN THE ABSENCE OF EXIGENT CIRCUMSTANCES, OBTAIN AN ARREST WARRANT PRIOR TO MAKING A FELONY ARREST IN A DWELLING. THE COURT REVERSED RESPONDENT'S MURDER CONVICTION ON THE GROUND THAT RESPONDENT'S STATEMENT MADE AFTER A PROBABLE CAUSE, PEACEFUL DAYTIME ARREST IN HIS HOME, FOLLOWING A CONSENSUAL ENTRY,[8] TAINTED HIS OTHERWISE VOLUNTARY STATEMENT.

THIS COURT HAS NEVER INVALIDATED AN ARREST BASED UPON PROBABLE CAUSE SOLELY BECAUSE THE OFFICERS FAILED TO SECURE AN ARREST WARRANT. UNITED STATES v. WATSON, 423 U.S. 411, 417-418, 96 S.CT. 820, 824-825 (1976), REHEARING DENIED, 424 U.S. 979, 96 S.CT. 1488 (1976);

---

8. PENNSYLVANIA'S LOWER APPELLATE COURT, THE SUPERIOR COURT, IN A PLURALITY OPINION, RECENTLY NOTED THAT HAD THE ISSUE NOT ALREADY BEEN RESOLVED BY THE PENNSYLVANIA SUPREME COURT IN THE INSTANT CASE, THE COURT WOULD HAVE HELD THAT AN ARREST WARRANT IS NOT CONSTITUTIONALLY REQUIRED FOR AN ARREST ENTRY, AND THE COURT WOULD HAVE ADOPTED THE AMERICAN LAW INSTITUTE'S RECOMMENDATION REQUIRING ARREST WARRANTS ONLY FOR NIGHTTIME ENTRIES. COMMONWEALTH v. FLADGER, ___ PA. SUPERIOR CT. ___, 398 A.2D 707 (1979). SEE ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, SECTIONS 120.1 AND 120.6 (NOTE AND COMMENTARY) (OFFICIAL DRAFT, 1972).

GERSTEIN v. PUGH, 420 U.S. 103, 115, 95 S.CT. 854, 864 (1975).

THE COURT HAS ON OCCASION, HOWEVER, OBSERVED THAT THE ISSUE OF "WHETHER AND UNDER WHAT CIRCUMSTANCES AN OFFICER MAY ENTER A SUSPECT'S HOME TO MAKE A WARRANTLESS ARREST"[9] IS UNSETTLED, GERSTEIN v. PUGH, SUPRA AT 113, 95 S.CT. AT 863 N. 13; UNITED STATES v. WATSON, SUPRA AT 418 N.6, 96 S.CT. AT 825, AND THE COURT HAS RECENTLY NOTED PROBABLE JURISDICTION IN TWO

---

9. IN COOLIDGE v. NEW HAMPSHIRE, 403 U.S. 443, 91 S.CT. 2022 (1971) REHEARING DENIED 404 U.S. 874, 92 S.CT. 26 (1971), THE COURT IN A PLURALITY OPINION DEALING WITH A NIGHTTIME ENTRY NOTED THE DICHOTOMY THAT EXISTS BETWEEN WARRANTLESS ENTRIES TO MAKE ARRESTS, AND SIMILAR ENTRIES TO SEARCH (403 U.S. AT 477-478, 91 S.CT. AT 2043-2044), AND NOTED THAT IT MIGHT BE WISE TO RE-EXAMINE THE ISSUE. 403 U.S. AT 480, 91 S.CT. AT 2045. THE COURT STATED THAT:

> THE CASE OF WARDEN v. HAYDEN, SUPRA (387 U.S. 294, 87 S.CT. 1642 (1967)), WHERE THE COURT ELABORATED A "HOT PURSUIT" JUSTIFICATION FOR THE POLICE ENTRY INTO THE DEFENDANT'S HOUSE WITHOUT A WARRANT FOR HIS ARREST, CERTAINLY STANDS BY NEGATIVE IMPLICATION FOR THE PROPOSITION THAT AN ARREST WARRANT IS REQUIRED IN THE ABSENCE OF EXIGENT CIRCUMSTANCES.

403 U.S. AT 480-481, 91 S.CT. AT 2045.

HOWEVER, IN KER v. CALIFORNIA, 374 U.S. 23, 83 S.CT. 1623 (1963), THE COURT UPHELD AN UNANNOUNCED AND WARRANTLESS ENTRY TO EFFECT AN ARREST, AND NO MEMBER OF THE COURT OBJECTED TO THE ENTRY, BUT ONLY TO THE LACK OF PRIOR ANNOUNCEMENT.

CASES UPHOLDING THE CONSTITUTIONALITY OF WARRANTLESS ARREST ENTRIES. PAYTON V. NEW YORK, SUPRA.

THE COMMONWEALTH RESPECTFULLY REQUESTS THE GRANT OF CERTIORARI TO DEMONSTRATE THAT NEITHER THE PURPOSE NOR THE HISTORY OF THE FOURTH AMENDMENT JUSTIFIES THE PENNSYLVANIA SUPREME COURT'S HOLDING, THAT RESPONDENT'S PEACEFUL, DAYTIME ARREST FOR MURDER, AFTER A CONSENSUAL ENTRY TO HIS HOME, WAS VIOLATIVE OF THE FOURTH AMENDMENT. EVEN IF A MORE GENERALIZED WARRANT REQUIREMENT IS IMPOSED, IT SHOULD NOT BE INVOKED UNDER THE CIRCUMSTANCES PRESENTED HERE.

CONCLUSION

FOR THE FOREGOING REASONS, THE COMMONWEALTH OF PENNSYLVANIA RESPECTFULLY REQUESTS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE DECISION BELOW.

RESPECTFULLY SUBMITTED,

MARIANNE E. COX
ASSISTANT DISTRICT ATTORNEY

STEVEN H. GOLDBLATT
DEPUTY DISTRICT ATTORNEY
FOR LAW

EDWARD G. RENDELL
DISTRICT ATTORNEY

2400 CENTRE SQUARE WEST
PHILADELPHIA, PENNSYLVANIA 19102

APPENDIX A

[J212]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA	:	No. 559 January Term, 1976
v.	:	Appeal from Judgment of Sentence of the Court of Common Pleas, Criminal, of Philadelphia, at No. 1675 September Session, 1975.
KEVIN WILLIAMS, APPELLANT	:	

OPINION OF THE COURT

O'BRIEN, J.

APPELLANT, KEVIN WILLIAMS, WAS CONVICTED OF MURDER OF THE FIRST DEGREE IN THE COURT OF COMMON PLEAS OF PHILADELPHIA, AND SENTENCED TO LIFE IMPRISONMENT. HE APPEALS THE JUDGMENT OF SENTENCE.

APPELLANT WAS CHARGED IN CONNECTION WITH THE DEATH OF JAMES SPINKS. THE VICTIM, ACCOMPANIED BY A FRIEND, JAMES NORWOOD, WAS WALKING SOUTHWARD ON THE EAST SIDE OF 32ND STREET IN PHILADELPHIA BETWEEN 9:00 AND 10:00 P.M. ON SEPTEMBER 30, 1972. JUST AFTER THEY CROSSED BERKS STREET, SPINKS WAS FATALLY SHOT FROM THE REAR. A .22 CALIBER BULLET ENTERED THE RIGHT BACK, PASSED THROUGH THE LIVER, TRAVELED AT AN ANGLE THROUGH

THE MIDDLE OF THE BODY, AND LODGED IN THE LEFT CHEST.

ON OCTOBER 14, 1973, A RIFLE WAS THROWN FROM A CAR BEING CHASED BY PHILADELPHIA POLICE. THE CAR WAS OCCUPIED BY FOUR INDIVIDUALS, INCLUDING ONE JAMES DAVIS, ALL OF WHOM WERE ARRESTED. BALLISTICS EXPERTS DETERMINED THAT THE RIFLE WAS THE ONE USED TO SHOOT SPINKS. APPELLANT DID NOT BECOME A SUSPECT IN THE SHOOTING UNTIL SEPTEMBER 5, 1975, WHEN SHELLY KNOX, WHO WAS BEING QUESTIONED ABOUT THE UNRELATED KILLING OF A STOREKEEPER, SAID THAT APPELLANT TOLD HIM ON OCTOBER 1, 1972, THAT HE HAD SHOT SPINKS. KNOX SAID THAT JAMES DAVIS WAS LATER ARRESTED WITH THE WEAPON USED TO MURDER SPINKS. APPELLANT WAS ARRESTED AT HIS HOME WITHOUT A WARRANT AT 6:35 A.M. ON SEPTEMBER 6, 1975. HE GAVE A STATEMENT TO THE POLICE IN WHICH HE SAID THAT HE BROKE INTO A CAR ON THE NIGHT OF THE SHOOTING AND TOOK A .22 CALIBER RIFLE FROM WHICH HE FIRED A SHOT TOWARD SPINKS AND NORWOOD. HE GAVE THE RIFLE AWAY THE NEXT DAY. HE SAID THAT HE DID NOT KNOW WHO SPINKS AND NORWOOD WERE AT THE TIME OF THE SHOOTING, BUT LEARNED THE NEXT DAY THAT THE DECEDENT WAS SOMEONE KNOWN TO HIM AS "CHUCKIE," AND THAT HE HAD KNOWN THE DECEDENT FOR APPROXIMATELY TWO YEARS. APPELLANT LATER REPUDIATED THE STATEMENT AND ATTEMPTED TO HAVE IT SUPPRESSED.

HE TESTIFIED AT TRIAL AND DENIED INVOLVEMENT IN THE SHOOTING. APPELLANT WAS EIGHTEEN AT THE TIME OF THE ARREST AND FIFTEEN AT THE TIME OF THE SHOOTING.

APPELLANT ARGUES THAT THE EVIDENCE DOES NOT SUPPORT THE VERDICT. HE CLAIMS THAT NEITHER INTENT TO KILL NOR MALICE CAN PROPERLY BE INFERRED FROM THE FIRING OF A SHOT FROM A DISTANCE TOWARD PEOPLE APPELLANT DID NOT KNOW. THEREFORE, IN APPELLANT'S VIEW, THE DEGREE OF GUILT COULD NOT RISE HIGHER THAN VOLUNTARY OR INVOLUNTARY MANSLAUGHTER. HE CLAIMS TO BE ENTITLED TO A DISCHARGE ON THE BASIS THAT THE STATUTE OF LIMITATIONS BARRED A MANSLAUGHTER PROSECUTION. WE DO NOT ACCEPT APPELLANT'S CLAIM. WE REVIEW THE EVIDENCE IN LIGHT OF THE STANDARD SET FORTH IN COMMONWEALTH V. ROSE, 463 PA. 264, 344 A.2D 824 (L975), WHERE WE STATED THAT:

> "THE TEST OF SUFFICIENCY OF THE EVIDENCE IS WHETHER, VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE COMMONWEALTH AND DRAWING THE PROPER INFERENCES FAVORABLE TO THE COMMONWEALTH, THE TRIER OF FACT COULD REASONABLY HAVE FOUND THAT ALL OF THE ELEMENTS OF THE CRIME HAD BEEN ESTABLISHED BEYOND A REASONABLE DOUBT.... MOREOVER, IT IS THE PROVINCE OF THE TRIER OF FACT TO PASS UPON THE CREDIBILITY OF WITNESSES AND THE WEIGHT TO BE ACCORDED THE EVIDENCE PRODUCED.... THE FACT-FINDER IS FREE TO BELIEVE ALL, PART, OR NONE OF THE EVIDENCE...." (CITATIONS OMITTED.)

IT MAY BE INFERRED FROM THE EVIDENCE THAT APPELLANT SHOT THE DECEDENT IN A VITAL PART OF THE BODY, ALLOWING AN INFERENCE OF MALICE AND PREMEDITATION. COMMONWEALTH V. O'SEARO, 466 PA. 224 352 A.2D 30 (1976). THE INFERENCE MAY BE DRAWN EVEN IF APPELLANT SHOT THE DECEDENT FROM A DISTANCE AND DID NOT KNOW HIM. SEE COMMONWEALTH V. KAMPO, ___ PA. ___, ___ A.2D ___ (FILED OCTOBER 5, 1978). APPELLANT'S ARGUMENT THAT HE SHOULD BE DISCHARGED ON THE BASIS OF THE STATUTE OF LIMITATIONS FOR VOLUNTARY MANSLAUGHTER IS MERITLESS.

APPELLANT NEXT ARGUES THAT THE COURT ERRED IN REFUSING TO SUPPRESS HIS CONFESSION. HE CLAIMS THAT SINCE HE WAS ARRESTED IN HIS HOUSE WITHOUT A WARRANT IN THE ABSENCE OF EXIGENT CIRCUMSTANCES, THE ARREST WAS, THEREFORE, VIOLATIVE OF THE FOURTH AMENDMENT PROTECTIONS AGAINST UNREASONABLE SEARCH AND SEIZURE. HE FURTHER ARGUES THAT THE CONFESSION WAS A PRODUCT OF THE ILLEGAL ARREST, THEREBY RENDERING IT INADMISSIBLE.

WHILE WE HAVE NEVER BEEN CONFRONTED WITH THE ISSUE OF WHETHER AN ARREST WARRANT IS REQUIRED TO EFFECTUATE A VALID ARREST INSIDE THE ARRESTEE'S

HOME,[1] SAID ISSUE HAS BEEN CAREFULLY CONSIDERED IN THE VARIOUS CIRCUIT COURTS. THERE, VARIOUS CASES HAVE HELD THAT BECAUSE OF THE FOURTH AMENDMENT AND THE SUBSTANTIAL EXPECTATION OF PRIVACY IN ONE'S HOME, AN ARREST WARRANT IS REQUIRED TO VALIDLY ARREST SOMEONE IN HIS HOME UNLESS EXIGENT CIRCUMSTANCES EXIST TO JUSTIFY THE WARRANTLESS INTRUSION. UNITED STATES V. REED, 572 F.2D 412 (2D CIR. 1978); UNITED STATES V. SHYE, 492 F.2D 886 (6TH CIR. 1974); DORMAN V. UNITED STATES, 435 F.2D 385 (D.C. CIR. 1970); AND VANCE V. NORTH CAROLINA, 432 F.2D 984 (4TH CIR. 1970).

AS THE UNITED STATES SUPREME COURT STATED IN UNITED STATES V. MARTINEZ-FUERTE, 428 U.S. 543, 561 (1976), WHEN DISCUSSING BORDER-CHECKPOINT STOPS:

> "WE THINK THE SAME CONCLUSION IS APPROPRIATE HERE (THAT IN CERTAIN INSTANCES, A GOVERNMENTAL INTEREST IN ALLOWING A MINIMAL INTRUSION OUTWEIGHS A PRIVATE CITIZEN'S EXPECTATION OF PRIVACY),

---

1. IN COMMONWEALTH V. FLEWELLEN, 475 PA. 442, 380 A.2D 1217 (1977) WE UPHELD THE VALIDITY OF A WARRANTLESS ARREST IN DEFENDANT'S HOUSE. THERE, HOWEVER, THE DEFENDANT ALLEGED ONLY THAT THE ARREST WAS MADE WITHOUT PROBABLE CAUSE. WE WERE NOT CALLED UPON TO ANSWER THE QUESTION POSED IN THE INSTANT CASE.

> WHERE WE DEAL NEITHER WITH SEARCHES NOR WITH THE SANCTITY OF PRIVATE DWELLINGS, ORDINARILY AFFORDED THE MOST STRINGENT FOURTH AMENDMENT PROTECTION." (EMPHASIS ADDED.)

AS THE COURT STATED IN DORMAN V. UNITED STATES, SUPRA, AT 392-93:

> "TERMS LIKE 'EXIGENT CIRCUMSTANCES' OR 'URGENT NEED' ARE USEFUL IN UNDERSCORING THE HEAVY BURDEN ON THE POLICE TO SHOW THAT THERE WAS A NEED THAT COULD NOT BROOK THE DELAY INCIDENT TO OBTAINING A WARRANT, AND THAT IT IS ONLY IN THE LIGHT OF THOSE CIRCUMSTANCES AND THAT NEED THAT THE WARRANTLESS SEARCH MEETS THE ULTIMATE TEST OF AVOIDING CONDEMNATION UNDER THE FOURTH AMENDMENT AS 'UNREASONABLE.' WHILE THE NUMEROUS AND VARIED STREET FACT SITUATIONS DO NOT PERMIT A COMPREHENSIVE CATALOG OF THE CASES COVERED BY THESE TERMS, IT MAY BE USEFUL TO REFER TO A NUMBER OF CONSIDERATIONS THAT ARE MATERIAL, AND HAVE PARTICULAR PERTINENCE IN THE CASE AT BAR.
>
> "FIRST, THAT A GRAVE OFFENSE IS INVOLVED, PARTICULARLY ONE THAT IS A CRIME OF VIOLENCE. SEE, E.G., WARDEN V. HAYDEN [(387 U.S. 294 (1967)]; MCDONALD V. UNITED STATES, 335 U.S. 451, 459, 69 S.CT. 191, 93 L.ED. 153 (1948) (CONCURRING OPINION OF JUSTICE JACKSON). CONTRARIWISE THE RESTRICTIVE REQUIREMENT FOR A WARRANT IS MORE LIKELY TO BE RETAINED, AND THE NEED FOR PROCEEDING WITHOUT A WARRANT FOUND LACKING, WHEN THE OFFENSE IS WHAT HAS BEEN SOMETIMES REFERRED TO AS ONE OF THE 'COMPLACENT' CRIMES, LIKE GAMBLING.
>
> "SECOND, AND OBVIOUSLY INTER-RELATED, THAT THE SUSPECT IS REASONABLY BELIEVED TO BE ARMED. DELAY IN ARREST OF AN ARMED FELON MAY WELL INCREASE DANGER TO THE COMMUNITY MEANWHILE, OR TO THE OFFICERS AT TIME OF ARREST. THIS CONSIDERATION BEARS MATERIALLY ON THE JUSTIFICATION FOR A WARRANTLESS ENTRY.

"THIRD, THAT THERE EXISTS NOT MERELY THE MINIMUM OF PROBABLE CAUSE, THAT IS REQUISITE EVEN WHEN A WARRANT HAS BEEN ISSUED, BUT BEYOND THAT A CLEAR SHOWING OF PROBABLE CAUSE, INCLUDING REASONABLY TRUSTWORTHY INFORMATION, TO BELIEVE THAT THE SUSPECT COMMITTED THE CRIME INVOLVED.

"FOURTH, STRONG REASON TO BELIEVE THAT THE SUSPECT IS IN THE PREMISES BEING ENTERED.

"FIFTH, A LIKELIHOOD THAT THE SUSPECT WILL ESCAPE IF NOT SWIFTLY APPREHENDED.

"SIXTH, THE CIRCUMSTANCES THAT THE ENTRY, THOUGH NOT CONSENTED, IS MADE PEACEABLY. FORCIBLE ENTRY MAY IN SOME INSTANCES BE JUSTIFIED. BUT THE FACT THAT ENTRY WAS NOT FORCIBLE AIDS IN SHOWING REASONABLENESS OF POLICE ATTITUDE AND CONDUCT. THE POLICE, BY IDENTIFYING THEIR MISSION, GIVE THE PERSON AN OPPORTUNITY TO SURRENDER HIMSELF WITHOUT A STRUGGLE AND THUS TO AVOID THE INVASION OF PRIVACY INVOLVED IN ENTRY INTO THE HOME.

"ANOTHER FACTOR TO BE TAKEN INTO ACCOUNT, THOUGH IT WORKS IN MORE THAN ONE DIRECTION, RELATES TO TIME OF ENTRY -- WHETHER IT IS MADE AT NIGHT. ON THE ONE HAND, AS WE SHALL LATER DEVELOP, THE LATE HOUR MAY UNDERSCORE THE DELAY (AND PERHAPS IMPRACTICABILITY OF) OBTAINING A WARRANT, AND HENCE SERVE TO JUSTIFY PROCEEDING WITHOUT ONE. ON THE OTHER HAND, THE FACT THAT AN ENTRY IS MADE AT NIGHT RAISES PARTICULAR CONCERN OVER ITS REASONABLENESS, AS INDICATED IN JUSTICE HARLAN'S OPINION IN JONES V. UNITED STATES (357 U.S. 493 1958)), AND MAY ELEVATE THE DEGREE OF PROBABLE CAUSE REQUIRED, BOTH AS IMPLICATING THE SUSPECT, AND AS SHOWING THAT HE IS IN THE PLACE ENTERED." (FOOTNOTES OMITTED.)

IN THE INSTANT CASE, THE FOLLOWING FACTORS WOULD WEIGHT IN FAVOR OF UPHOLDING THE WARRANTLESS INTRUSION.

FIRST, THE CRIME APPELLANT WAS ARRESTED FOR WAS MURDER, CLEARLY A VIOLENT CRIME. SECOND, THE POLICE HAD MORE THAN SUFFICIENT PROBABLE CAUSE TO ARREST APPELLANT. THIRD, AS THE STRUCTURE ENTERED WAS APPELLANT'S RESIDENCE, POLICE HAD GOOD REASON TO BELIEVE APPELLANT WAS PRESENT. FOURTH, THE ARRESTING OFFICERS WERE ADMITTED INTO THE HOUSE BY APPELLANT'S STEPFATHER. FINALLY, THE INTRUSION AT 6:30 A.M. MUST BE CONSIDERED A DAYTIME SEARCH.

ON THE OTHER HAND, POLICE HAD INFORMATION THAT THE RIFLE USED IN THE INSTANT HOMICIDE WAS IN THE POSSESSION OF POLICE, AS ANOTHER INDIVIDUAL HAD BEEN ARRESTED AND HAD POSSESSION OF THE RIFLE. THUS, THE POLICE HAD NO REASON TO BELIVE THAT APPELLANT WAS ARMED AT THE TIME OF ARREST. EVEN MORE IMPORTANTLY, THE INSTANT HOMICIDE PRE-DATED THE DATE OF ARREST BY APPROXIMATELY THREE YEARS. THERE WAS LITTLE NEED OF SWIFT APPREHENSION. IN OUR VIEW, WE BELIEVE THESE TWO FACTORS OUTWEIGH THE FIVE FACTORS MILITATING IN FAVOR OF ALLOWING THE WARRANTLESS INTRUSION. IN UNITED STATES V. REED, SUPRA, AT 425, THE COURT FOUND THE TIME FACTOR TO BE CRUCIAL AND WE BELIEVE THAT, UNDER THESE CIRCUMSTANCES, THE POLICE SHOULD HAVE OBTAINED AN ARREST WARRANT. WE THUS BELIEVE

APPELLANT'S ARREST WAS ILLEGAL.[2]

AS THE ARREST OF APPELLANT WAS ILLEGAL, WE MUST NOW DETERMINE IF THAT FACT REQUIRES SUPPRESSION OF APPELLANT'S CONFESSION. AS THE UNITED STATES SUPREME COURT STATED IN WONG SUN V. UNITED STATES, 371 U.S. 471, 488 (1963), THE TEST IS

> "...WHETHER, GRANTING ESTABLISHMENT OF THE PRIMARY ILLEGALITY, THE EVIDENCE TO WHICH INSTANT OBJECTION IS MADE HAS BEEN COME AT BY EXPLOITATION OF THAT ILLEGALITY OR INSTEAD BY MEANS SUFFICIENTLY DISTINGUISHABLE TO BE PURGED OF THE PRIMARY TAINT."

HERE, APPELLANT CONFESSED WITHIN A HALF HOUR OF BEING TAKEN TO POLICE HEADQUARTERS. WE THUS BELIEVE THE CONFESSION WAS DIRECTLY RELATED TO THE ILLEGALY ARREST, AND WAS NOT "SUFFICIENTLY AN ACT OF FREE WILL." COMMONWEALTH V. BISHOP, 425 PA. 175, 182-83, 228 A.2D 661 (1967).

APPELLANT ALSO ALLEGES THAT THE TRIAL COURT ERRED IN TELLING THE JURY, IN RESPONSE TO A QUESTION, THAT HIS AGE HAD NO BEARING ON HIS CULPABILITY, IN ADMITTING THE MURDER WEAPON INTO EVIDENCE, IN ALLOWING

---

2. FURTHER, THE POLICE CANNOT JUSTIFY THE WARRANTLESS INTRUSION ON THE BASIS OF HOT PURSUIT, WARDEN V. HAYDEN (SUPRA), OR THAT THE ARREST WAS MADE IN PUBLIC. UNITED STATES V. SANTANA, 427 U.S. 38 (1976).

TESTIMONY CONCERNING APPELLANT'S ASSOCIATION WITH ONE OF THE INDIVIDUALS ARRESTED WITH THE WEAPON, AND IS NOT ALLOWING HIM TO QUESTION PROSPECTIVE JURORS AS TO WHETHER THEY WOULD BE MORE INCLINED TO BELIEVE A POLICE OFFICER THAN A CIVILIAN. OUR FINDING THAT THE ARREST WAS IMPROPER MAKES IT UNNECESSARY TO REACH THESE ISSUES.

JUDGMENT OF SENTENCE REVERSED AND A NEW TRIAL IS GRANTED.

MR. JUSTICE MANDERINO FILED A CONCURRING OPINION IN WHICH MR. JUSTICE ROBERTS JOINS.

MR. JUSTICE LARSEN FILED A DISSENTING OPINION.

MR. CHIEF JUSTICE EAGEN CONCURS IN THE RESULT.

[212]

IN THE SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA	:	No. 559 January Term, 1976
v.	:	Appeal from Judgment of Sentence of the Court of Common Pleas, Criminal, of Philadelphia, at No. 1675 September Session, 1975.
KEVIN WILLIAMS, Appellant	:	

CONCURRING OPINION

JUSTICE MANDERINO

Although I agree with the majority that appellant's arrest was invalid, and that his confession was the produce of that illegal arrest, I cannot agree with the majority's conclusion that a willful, deliberate, and premeditated killing may be inferred solely from the use of a deadly weapon on a vital part of the body. Commonwealth v. O'Searo, ___ Pa. ___, ___ A.2d ___ (1978) (concurring opinion of Manderino, J.). Commonwealth v. O'Searo, 466 Pa. 244, 352 A.2d 30 (1976) (dissenting opinion of Manderino, J., joined by Roberts, J.). Proof of the use of a deadly weapon on a vital part of the body is sufficient to support an inference

of malice only.

In the cases in which we have upheld convictions of murder in the first degree, the evidence established not only the use of a weapon on a vital part of the body, but also other facts from which the fact finder could conclude that the killing was willful, deliberate, and premeditated. Commonwealth v. Petrakovich, 459 Pa. 570, 329 A.2d 844, 848 (1974); Commonwealth v. Mosley, 444 Pa. 134, 279 A.2d 174 (1971); Commonwealth v. Hornberger, 441 Pa. 57, 270 A.2d 195 (1970); Commonwealth v. Ewing, 439 Pa. 88, 264 A.2d 661 (1970); Commonwealth v. Commander, 436 Pa. 532, 260 A.2d 773 (1970).

In this case, however, the majority relies on only one fact -- the firing of a shot from a distance toward people appellant did not know -- to support its conclusion that deliberation and premeditation, as well as malice, can be inferred.

An inference of deliberation and premeditation can be made only if the evidence contains other facts such as:

> "(1) facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing, that is, planning activity.
>
> (2) facts about the defendant's prior relationship and conduct with the victim from which motive may be inferred.

(3) FACTS ABOUT THE NATURE OF THE KILLING (WHICH INDICATE) THAT THE MANNER OF KILLING WAS SO PARTICULAR AND EXACTING THAT THE DEFENDANT MUST HAVE INTENTIONALLY KILLED ACCORDING TO A PRECONCEIVED DESIGN." (EMPHASIS IN ORIGINAL).

LA FAVE AND SCOTT HANDBOOK IN CRIMINAL LAW, PP. 562-568.

THE MAJORITY'S RELIANCE ON COMMONWEALTH V. KAMPO, ___ PA. ___, 391 A.2D 1005 (1978) FOR THE PROPOSITION THAT MALICE AND PREMEDITATION CAN BE INFERRED IS MISPLACED. IN COMMONWEALTH V. KAMPO, SUPRA, TWO WITNESSES TESTIFIED THAT APPELLANT TOLD THEM SOMEONE WAS GOING TO DIE THAT DAY. CLEARLY, THIS TESTIMONY SHOWED A PLAN TO KILL SOMEONE AND THEREFORE, A FACT FINDER COULD FIND DELIBERATION AND PREMEDITATION. HERE, THERE IS NO SUCH ADDITIONAL EVIDENCE.

MR. JUSTICE ROBERTS JOINS IN THIS CONCURRRING OPINION.

[J212]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA	:	No. 559 JANUARY TERM, 1976
V.	:	APPEAL FROM JUDGMENT OF SENTENCE OF THE COURT OF COMMON PLEAS, CRIMINAL, OF PHILADELPHIA, AT NO. 1675 SEPTEMBER SESSION, 1975.
KEVIN WILLIAMS, APPELLANT	:	

DISSENTING OPINION

JUSTICE ROLF LARSEN

I DISSENT AND IN SUPPORT THEREOF QUOTE FROM JUDGE HUGH R. JONES OF THE NEW YORK COURT OF APPEALS (THAT STATE'S HIGHEST COURT) IN HIS MAJORITY OPINION IN PEOPLE V. PAYTON, 45 N.Y.2D 300, 309-312, 380 N.E.2D 224, 228-230 (1978):

> THE PARTIES ALSO DRAW THE CONFLICTING INFERENCES (WHICH OTHERS HAVE SIMILARLY DRAWN) FROM HOLDINGS AND WRITINGS OF THE SUPREME COURT OF THE UNITED STATES AND ITS INDIVIDUAL JUSTICES. DEFENDANTS INFER FROM UNITED STATES V. WATSON (423 US 411) THAT AN ARREST FOLLOWING A WARRANTLESS ENTRY IN THE HOME IS INVALID; THE PEOPLE CONCLUDE FROM KER V. CALIFORNIA (374 US 23) THAT THE CONTRARY IS THE CASE. THE FACT IS THAT THE SUPREME COURT HAS NOT YET RESOLVED THE ISSUE, AS APPEARS FROM THE EXPLICIT STATEMENT IN THE PLURALITY OPINION IN WATSON THAT THE QUESTION

"WHETHER AND UNDER WHAT CIRCUMSTANCES AN OFFICER MAY ENTER A SUSPECT'S HOME TO MAKE A WARRANTLESS ARREST" IS 'STILL UNSETTLED' (423 US, AT P 418, N 6). NOR HAS THE ISSUE BEEN RESOLVED IN OUR COURT.

IN DETERMINING NOW THAT THE WARRANTLESS ARRESTS EFFECTED IN THESE CASES DID NOT VIOLATE DEFENDANTS' CONSTITUTIONAL RIGHTS TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES, WE RELY BOTH ON WHAT WE PERCEIVE TO BE A SUBSTANTIAL DIFFERENCE BETWEEN THE INTRUSION WHICH ATTENDS AN ENTRY FOR THE PURPOSE OF SEARCHING THE PREMISES AND THAT WHICH RESULTS FROM AN ENTRY FOR THE PURPOSE OF MAKING AN ARREST, AND ON THE SIGNIFICANT DIFFERENCE IN THE GOVERNMENTAL INTEREST IN ACHIEVING THE OBJECTIVE OF THE INTRUSION IN THE TWO INSTANCES.

IN THE CASE OF THE SEARCH, UNLESS APPROPRIATELY LIMITED BY THE TERMS OF A WARRANT, THE INCURSION ON THE HOUSEHOLDER'S DOMAIN NORMALLY WILL BE BOTH MORE EXTENSIVE AND MORE INTENSIVE AND THE RESULTING INVASION OF HIS PRIVACY OF GREATER MAGNITUDE THAN WHAT MIGHT BE EXPECTED TO OCCUR ON AN ENTRY MADE FOR THE PURPOSE OF EFFECTING HIS ARREST. A SEARCH BY ITS NATURE CONTEMPLATES A POSSIBLY THOROUGH RUMAGING THROUGH POSSESSIONS, WITH CONCURRENT UPHEAVAL OF THE OWNER'S CHOSEN OR RANDOM PLACEMENT OF GOODS AND ARTICLES AND DISCLOSURE TO THE SEARCHES OF A MYRIAD OF PERSONAL ITEMS AND DETAILS WHICH HE WOULD EXPECT TO BE FREE FROM SCRUTINY BY UNINVITED EYES. THE HOUSEHOLDER BY THE ENTRY AND SEARCH OF HIS RESIDENCE IS STRIPPED BARE, IN GREATER OR LESSER DEGREE, OF THE PRIVACY WHICH NORMALLY SURROUNDS HIM IN HIS DAILY LIVING, AND, IF HE SHOULD BE ABSENT, TO AN EXTENT OF WHICH HE WILL BE UNAWARE.

ENTRY FOR THE PURPOSE OF ARREST MAY BE EXPECTED TO BE QUITE DIFFERENT. WHILE THE TAKING INTO CUSTODY OF THE PERSON OF THE HOUSEHOLDER IS UNQUESTIONABLY OF GRAVE IMPORT, THERE IS NO ACCOMPANYING

PRYING INTO THE AREA OF EXPECTED PRIVACY ATTENDING HIS POSSESSIONS AND AFFAIRS. THAT PERSONAL SEIZURE ALONE DOES NOT REQUIRE A WARRANT WAS ESTABLISHED BY UNITED STATES V. WATSON (423 US 411, SUPRA), WHICH UPHELD A WARRANTLESS ARREST MADE IN A PUBLIC PLACE. IN VIEW OF THE MINIMAL INTRUSION ON THE ELEMENTS OF PRIVACY OF THE HOME WHICH RESULTS FROM ENTRY ON THE PREMISES FOR MAKING AN ARREST (AS COMPARED WITH THE GROSS INTRUSION WHICH ATTENDS THE ARREST ITSELF), WE PERCEIVE NO SUFFICIENT REASON FOR DISTINGUISHING BETWEEN AN ARREST IN A PUBLIC PLACE AND AN ARREST IN A RESIDENCE. TO THE EXTENT THAT AN ARREST WILL ALWAYS BE DISTASTEFUL OR OFFENSIVE, THERE IS LITTLE REASON TO ASSUME THAT ARREST WITHIN THE HOME IS ANY MORE SO THAN ARREST IN A PUBLIC PLACE; ON THE CONTRARY, IT MAY WELL BE THAT BECAUSE OF THE ADDED EXPOSURE THE LATTER MAY BE MORE OBJECTIONABLE.

AT LEAST AS IMPORTANT, AND PERHAPS EVEN MORE SO, IN CONCLUDING THAT ENTRIES TO MAKE ARRESTS ARE NOT 'UNREASONABLE' -- THE SUBSTANTIVE TEST UNDER THE CONSTITUTIONAL PROSCRIPTIONS -- IS THE OBJECTIVE FOR WHICH THEY ARE MADE, VIZ., THE ARREST OF ONE REASONABLY BELIEVED TO HAVE COMMITTED A FELONY, WITH RESULTANT PROTECTION TO THE COMMUNITY. THE 'REASONABLENESS' OF ANY GOVERNMENTAL INTRUSION IS TO BE JUDGED FROM TWO PERSPECTIVES -- THAT OF THE DEFENDANT, CONSIDERING THE DEGREE AND SCOPE OF THE INVASION OF HIS PERSON OR PROPERTY; THAT OF THE PEOPLE, WEIGHING THE OBJECTIVE AND IMPERATIVE OF GOVERNMENTAL ACTION. THE COMMUNITY'S INTEREST IN THE APPREHENSION OF CRIMINAL SUSPECTS IS OF A HIGHER ORDER THAN IS ITS CONCERN FOR THE RECOVERY OF CONTRABAND OR EVIDENCE; NORMALLY THE HAZARDS CREATED BY THE FAILURE TO APPREHEND FAR EXCEED THE RISKS WHICH MAY FOLLOW NONRECOVERY.

...THE AMERICAN LAW INSTITUTE'S MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE MAKES SIMILAR PROVISION IN SECTION 120.6, WITH SUGGESTED SPECIAL RESTRICTIONS ONLY AS TO NIGHTTIME ENTRIES. THE ACCOMPANYING COMMENTARY STATES: 'TO GO FURTHER AND REQUIRE A WARRANT OR A SHOWING OF NECESSITY BEFORE POLICE MAY MAKE A FELONY ARREST ON PRIVATE PROPERTY EVEN IN DAYTIME SEEMS UNDULY RESTRICTIVE. MOREOVER, APART FROM THE SPECIALLY ALARMING QUALITY OF NIGHTTIME ENTRIES AND APART FROM SEARCH CONSIDERATIONS, IT IS FAR FROM CLEAR THAT AN ARREST IN ONE'S HOME IS SO MUCH MORE THREATENING OR HUMILIATING THAN A STREET ARREST AS TO JUSTIFY FURTHER RESTRICTIONS ON THE POLICE.' (AMERICAN LAW INSTITUTE, MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE (1975), P 307).

APPENDIX B

Supreme Court of Pennsylvania

Eastern District

SALLY MRVOS
PROTHONOTARY
CATHERINE E. LYDEN
DEPUTY PROTHONOTARY

456 CITY HALL
PHILADELPHIA, 19107
(215) 686-3561-64

February 16, 1979

RECEIVED
FEB 16 1979
DISTRICT ATTORNEY

Robert B. Lawler, Esquire
Chief, Appeals Division
2300 Centre Square
Philadelphia, PA 19102

Re: Commonwealth of Pennsylvania v. Kevin Williams, Appellant
No. 559 January Term, 1976

Dear Mr. Lawler:

This is to advise you that the following Order has been endorsed on your Application for Reargument, filed in the above-captioned matter:

"2/12/79

Petition denied.

Per Curiam."

Very truly yours,

Sally Mrvos

Sally Mrvos
Prothonotary

SM:bl

cc: Leslie J. Carson, Esquire
West Publishing Company
Argued 4/20/78
Decision 11/18/78 - J-212

Appendix C

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION
CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	SEPTEMBER TERM, 1975
v.	:	
KEVIN WILLIAMS	:	No. 1675

OPINION

SMITH, THEODORE B., JR., J.

A Jury found defendant guilty of First Degree Murder, and in accordance with the law in effect of September 30, 1972, the date of the homicide with which he was charged, he was sentenced to life imprisonment. He appeals from denial of his post-trial motions in arrest of judgment and for new trial.

The evidence for the Commonwealth can be summarized as follows: (N.T. 231) On the night of September 30, 1972 at about 9:30 p.m. James Norwood, 26 years, left his home with James Spinks, 21 years, the deceased in this case, and walking, reached the intersection of 32nd and Berks Streets in Philadelphia. Then at the sound of a gunshot both men ran and when Norwood missed the presence of Spinks, went in search of and found him lying

on the front steps of a house at 32nd and Montgomery Avenue. Norwood hailed a Yellow Cab and the wounded Spinks was taken to the Women's Medical Hospital where he died at approximately 11:00 p.m. that night, from a single .22 caliber gunshot wound of the chest, as subsequently determined by Dr. Dimitri Contostavolos of the Philadelphia Medical Examiner's Office. In the course of his post-mortem examination of the decedent, Dr. Contostavolos recovered (N.T. 209) the bullet which caused Spinks' death which was ultimately given to the Ballistics Unit of the Philadelphia Police Department.

On October 14, 1973, at approximately 10:45 p.m. (N.T. 254) Officer James Harris with others (N.T. 256) pursued a fleeing automobile and subsequently arrested four young males, one of whom was named James Davis, a known friend of Defendant who lived near 32nd and Berks Streets (N.T. 260). During the chase of the car a .22 caliber, single shot bolt-action rifle was thrown from it. This rifle, marked for identification at trial as Commonwealth Exhibit 7, was subsequently test-fired by William Danbacher, Firearms Examiner in the Philadelphia Police Department's Firearms Identification Unit, who then compared the recovered test-fired bullet with the evidentiary

BULLET PREVIOUSLY RECOVERED FROM THE BODY OF JAMES SPINKS. MR. DANBACHER TESTIFIED THAT IN HIS OPINION BOTH THE EVIDENTIARY AND TEST-FIRED BULLETS WERE FIRED FROM THE SAME EXHIBIT C-7 GUN (N.T. 273).

ON SEPTEMBER 7, 1975 AT 6:35 A.M. DETECTIVES ROBERT KANE AND ALBERT PASCALI ARRESTED THE DEFENDANT, AGE 18 YEARS, AT HIS HOME 3227 WEST BERKS STREET (N.T. 283-4). THEY TOOK HIM TO THE POLICE ADMINISTRATION BUILDING, WHERE HE WAS WARNED OF HIS CONSTITUTIONAL RIGHTS AND FIRST INTERROGATED AT 7:10 A.M. AT WHICH TIME HE ADMITTED IN A WRITTEN SIGNED STATEMENT THAT HE, WITHOUT REASON, ON SEPTEMBER 30, 1972, FROM AN ALLEY ON BERKS STREET, SHOT AT TWO MEN, UNKNOWN TO HIM THEN, WITH A .22 CALIBER SINGLE SHOT BOLT-ACTION RIFLE WHICH HE HAS JUST TAKEN FROM THE TRUNK OF A CAR, NOT HIS. HE ALSO SAID THAT HE LEARNED THE NEXT DAY THAT THE PERSON SHOT WAS A "CHUCK", WITH WHOM HE USED TO GANG WAR, THAT ON THE DAY AFTER THE SHOOTING HE GAVE THE RIFLE TO SOMEONE, AND THAT LATER THE RIFLE, BEING A GANG WEAPON, WAS RECOVERED BY THE POLICE WHEN SOME BOYS WERE ARRESTED WITH IT.

TESTIFYING IN HIS OWN BEHALF, THE DEFENDANT DENIED THAT THE FACTS SET FORTH IN THE WRITTEN STATEMENT WERE TRUE. TO THE CONTRARY, HE STATED THAT HE

DID NOT SHOOT JAMES SPINKS, AND NEITHER OWNED NO[R] EVER POSSESSED ANY GUN AND IN PARTICULAR, NOT THE RIFLE IN EVIDENCE.

THE DEFENDANT ALSO PRESENTED HIS BROTHER, ELLIOTT WILLIAMS, AND JOHN ROBINSON WHO BOTH TESTIFIED TO A CAR PULLING TO A STOP ON SEPTEMBER 30, 1972 IN THE SHOOTING VICINITY, AND OF TWO MEN GETTING OUT OF IT. WILLIAMS SAID HE SAW THEM LIFT THE HOOD OF THE CAR, REACH UNDER IT AND THEN GET BACK INTO THE CAR, AND THAT WHILE HE HEARD NO SHOT, HE DID SEE SPINKS STAGGERING. ROBINSON SAID HE SAW ONE OF THE MEN WHO HAD A RIFLE, SHOOT AT THE DECEASED, AFTER WHICH THE MEN JUMPED BACK INTO THE CAR AND SPED AWAY AS SPINKS FELL.

GRANT OF THE MOTION IN ARREST OF JUDGMENT IS PRECLUDED BY THE EVIDENCE ABOVE SUMMARIZED. THE CRITERIA FOR DETERMINATION OF THE MERIT OF SUCH A MOTION ARE FIRMLY ESTABLISHED. THE STANDARD TEST OF THE WEIGHT OR SUFFICIENCY OF EVIDENCE TO CONVICT IS WHETHER, ACCEPTING AS TRUE ALL THE EVIDENCE AND ALL REASONABLE INFERENCES THEREFROM, UPON WHICH, IF BELIEVED, THE JURY COULD PROPERLY HAVE BASED ITS VERDICT, IT IS SUFFICIENT IN LAW TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF THE CRIME OR CRIMES OF WHICH HE HAS BEEN CONVICTED.

IN ADDITION, ALL THE EVIDENCE ADMITTED AT TRIAL IS TO BE VIEWED IN THE LIGHT MOST FAVORABLE TO THE COMMONWEALTH, AND ALL REASONABLE INFERENCES DRAWN IN THE COMMONWEALTH'S FAVOR. COMMONWEALTH V. JACKSON, 353 A.2D 379; COMMONWEALTH V. EDWARDS, 353 A.2D 383; COMMONWEALTH V. ILGENFRITZ, 353 A.2D 387; COMMONWEALTH V. BAKER, 353 A.2D 454.

INDEED, DEFENDANT SERIOUSLY URGES ONLY TWO CONSIDERATIONS IN SUPPORT OF HIS MOTION IN ARREST OF JUDGMENT: (1) THE CIRCUMSTANCES OF HIS ACQUIRING THE RIFLE BY THEFT, ONLY A FEW MINUTES BEFORE THE SHOOTING, AND THEN FIRING IT AT SOMEONE HE DID NOT KNOW, AT NIGHT, ON A POORLY LIGHTED STREET, FROM A DISTANCE OF 125 FEET, OBVIATE ANY INFERENCE OF INTENT OR MALICE AS NECESSARY ELEMENTS, RESPECTIVELY, OF EITHER FIRST OR SECOND DEGREE MURDER, AND, RATHER, COMPEL THE CONCLUSION THAT THIS WAS AN INNOCENT ADOLESCENT IMPULSIVELY TRYING OUT A NEW TOY; (2) HIS EXTREME YOUTH RENDERS HIM INCAPABLE OF FORMING OR HARBORING THE INTENT OR MALICE NECESSARY TO SUPPORT HIS CONVICTION. TO THE CONTRARY, (1) BY THE INFERENCES TO WHICH THE COMMONWEALTH IS ENTITLED AT THIS JUNCTURE, DEFENDANT BY HIS OWN WRITTEN STATEMENT KNEW HOW TO FORCE OPEN A LOCKED AUTOMOBILE TO THIEVE ITS CONTENTS,

AND WAS OF SOME EXPERIENCE IN GANG WARS, GLARING INCONSISTENCIES WITH THE PORTRAIT OF HIM PRESENTLY URGED; NEITHER IS THERE ANY WORD IN THE TESTIMONY THAT HE WAS IMPULSIVELY TRYING OUT A NEW-FOUND ACQUISITION, RATHER HE TESTIFIED THAT HE NEVER HAD POSSESSION OF AND NEVER FIRED THE WEAPON. (2) IT IS STILL THE LAW THAT USE OF A DEADLY WEAPON ON A VITAL PART OF A VICTIM'S BODY AFFORDS GROUND FOR THE INFERENCE OF BOTH SPECIFIC INTENT TO KILL AND OF MALICE. COMMONWEALTH V. PADGETT, ___ PA. ___, 348 A.2D 87; COMMONWEALTH V. AGIE, 449 PA. 187, 296 A.2D 741.

NO AUTHORITY IS OFFERED FOR THE PROPOSITION THAT THE AGE OF 15 (A) IPSO FACTO NEGATES THE EXISTENCE OF EITHER INTENT OR MALICE AS NECESSARY ELEMENTS OF EITHER FIRST OR SECOND DEGREE MURDER, OR (B) REQUIRES ANY EVALUATION OF EVIDENCE FOR EXISTENCE OF THESE ELEMENTS OTHER THAN BY THE STANDARD APPLICABLE TO AN ADULT DEFENDANT. THIS COURT KNOWS OF NO SUCH AUTHORITY, AND RESEARCH DISCLOSES NONE.

IN SUPPORT OF THE MOTION FOR NEW TRIAL, THE KINDRED PROPOSITION IS ADVANCED THAT THE JURY, PARTICULARLY IN RESPONSE TO ITS OWN DIRECT QUESTION, SHOULD HAVE BEEN INSTRUCTED THAT IT MUST TAKE THE DEFENDANT'S AGE INTO CONSIDERATION IN DETERMINING EXISTENCE OF

EITHER INTENT OR MALICE. THE JURY INTERRUPTED ITS DELIBERATIONS TO ASK THIS QUESTION OF THE COURT:

> "DOES THE DEFENDANT'S AGE AT THE TIME OF THE CRIME HAVE ANY BEARING ON THE DEGREE OF GUILT?"

THE COURT'S ANSWER TO THE QUESTION POSED WAS: ....."THE DEFENDANT'S AGE STATED BY THE POLICE TO BE 16, STATED BY THE DEFENDANT TO BE 15, AT THE TIME OF THE COMMISSION OF THIS CRIME, ALTHOUGH HE WAS APPREHENDED WHEN 18, HAS NO BEARING ON THE DEGREE OF GUILT.....IF BY THAT YOU MEAN FIRST DEGREE MURDER, SECOND DEGREE MURDER OR VOLUNTARY MANSLAUGHTER. IT HAS NO BEARING ON THE DEGREE OF GUILT. LET ME SAY THIS, THAT ON THE SCORE OF AGE CONSIDERED ALONE, A 15 OR 16-YEAR-OLD YOUNG MAN AT THE COMMISSION OF THE CRIME, HAS FULL RESPONSIBILITY AS AN ADULT FOR ANY CRIMES COMMITTED." WHEN QUESTIONED, THE FOREMAN OF THE JURY INFORMED THE COURT THAT THIS HAD, HE BELIEVED, ANSWERED THE JURY'S QUESTION.

THIS ADDITIONAL INSTRUCTION WAS IN ACCORDANCE WITH ALL THE LAW, AS KNOWN TO THE TRIAL JUDGE, AND NO AUTHORITY TO ANY DIFFERENT EFFECT HAS BEEN OFFERED BY DEFENDANT OR DISCOVERED BY THE COURT'S INDEPENDENT RESEARCH. THE SAME IS TO BE SAID AS TO THE CONTENTION THAT THE DEFENDANT'S YOUTH REQUIRED THE COURT TO

INSTRUCT THE JURY TO CONSIDER IT AS ONE OF THE DETERMINING FACTORS OF THE EXISTENCE OF INTENT OR MALICE AS DISTINGUISHED FROM THE PRECISE POINT BY THE JURY, ITS BEARING ON DEGREE OF GUILT.

THE AGE OF THE DEFENDANT IS CERTAINLY RELEVANT ON THE QUESTION OF CAPACITY TO COMMIT CRIME OR AS IN THIS CASE WHERE THE VOLUNTARINESS OF A CONFESSION IS CONCERNED. THE DEFENDANT IN THIS CASE WAS 15 OR 16 YEARS OF AGE AT THE CRIME'S COMMISSION AND HENCE, IS PRESUMED CAPABLE OF THE COMMISSION OF CRIME AND THE COURT DID CALL THE JURY'S ATTENTION TO HIS AGE BEING 18 (OR 19) WITH REGARD TO THEIR CONSIDERATION OF IT ON THE QUESTION OF VOLUNTARINESS OF THE CONFESSION (N.T. 406-407). THE DEFENDANT WAS ENTITLED TO NO MORE.

FURTHER, AS GROUND FOR NEW TRIAL DEFENDANT ASSERTS THAT THE POLICE LACKED PROBABLE CAUSE TO MAKE A WARRANTLESS ARREST FOR THE SPINKS SLAYING AND HENCE, THE STATEMENT WAS INADMISSIBLE.

AT THE SUPPRESSION HEARING HELD BEFORE JUDGE ARMAND DELLA PORTA, DETECTIVE ROBERT KANE OF THE HOMICIDE DIVISION OF THE PHILADELPHIA POLICE DEPARTMENT, TESTIFIED THAT PRIOR TO THE DEFENDANT'S ARREST ON SEPTEMBER 7, 1975, AT HIS HOME AT 3227 WEST BERKS

STREET, PHILADELPHIA, A SHORT DISTANCE FROM THE SHOOTING SCENE AT WHICH JAMES SPINKS WAS KILLED ON SEPTEMBER 30, 1972, HE WAS POSSESSED OF THE FOLLOWING INFORMATION: SHELLY KNOX (S.N.T. 59) TOLD HIM THAT ON OCTOBER 1, 1972, THE DAY FOLLOWING THE INCIDENT, KNOWING OF JAMES SPINKS' A/K/A "CHUCKIE" (S.N.T. 8) BEING SHOT, HE WENT TO THE DEFENDANT'S HOME AND IN A CONVERSATION WITH THE DEFENDANT WAS TOLD BY THE DEFENDANT THAT HE HAD SHOT AND KILLED "CHUCKIE" THE NIGHT BEFORE WITH A RIFLE, .22 CALIBER, SINGLE SHOT. THE INFORMANT ALSO SAID THE RIFLE WAS LATER "BUSTED" IN EAST FALLS WITH "SATCH" WHOSE REAL NAME WAS JAMES DAVIS (S.N.T. 9-10). THE INTERVIEW WITH KNOX AS INFORMANT WAS ON SEPTEMBER 6, 1975 (S.N.T. 10). A CHECK WITH BALLISTICS REVEALED THAT IN FACT JAMES DAVIS HAD BEEN ARRESTED ("BUSTED") WITH A .22 CALIBER RIFLE ON OCTOBER 14, 1973, WHICH THEY HAD IN THEIR POSSESSION.

WITH OR WITHOUT A WARRANT, IN ORDER FOR AN ARREST TO BE VALID, IT MUST BE BASED UPON PROBABLE CAUSE. IF THE ARREST IS ILLEGAL, ANY CONFESSION FOLLOWING IT WILL BE TAINTED AND UNLESS TAINT IS REMOVED, WILL BE INADMISSIBLE. THE CONSTITUTION OF THE UNITED STATES PROHIBITS THE ARREST OF A PERSON UNLESS THE ARRESTING OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT A CRIME HAS

BEEN OR IS BEING COMMITTED. PROBABLE CAUSE EXISTS ONLY WHERE THE FACTS AND CIRCUMSTANCES WITHIN THE OFFICERS' KNOWLEDGE AND OF WHICH THEY HAVE REASONABLY TRUSTWORTHY INFORMATION ARE SUFFICIENT IN THEMSELVES TO WARRANT A MAN OF REASONABLE CAUTION IN THE BELIEF THAT AN OFFENSE HAS BEEN OR IS BEING COMMITTED. COMMONWEALTH V. ELLSWORTH, 421 PA. 169, 218 A.2D 249 (1966); BRINEGAR V. UNITED STATES, 338 U.S. 160, 197-76, 69 S.CT. 1302, 1311 (1949).

WHERE PROBABLE CAUSE FOR A WARRANTLESS ARREST IS BASED ON HAARSAY INFORMATION SUPPLIED BY AN ANONYMOUS INFORMER, THE ARRESTING OFFICER MUST HAVE TWO TYPES OF ADDITIONAL INFORMATION BEFORE PROBABLE CAUSE IS ESTABLISHED: FIRST, IN ORDER TO ASSURE THAT THE TIP IS NOT MERELY AN UNSUPPORTED RUMOR, THE OFFICER MUST KNOW THE UNDERLYING CIRCUMSTANCES FROM WHICH THE INFORMER CONCLUDED THAT THE SUSPECT PARTICIPATED IN THE CRIME; SECOND, IN ORDER TO REDUCE THE POSSIBILITY THAT A TIP MEETING THE FIRST STANDARD IS MERELY A WELL-CONSTRUCTED FABRICATION, THE OFFICER MUST HAVE SOME REASONABLE BASIS FOR CONCLUDING THAT THE SOURCE OF THE TIP WAS RELIABLE. BETRAND APPEAL, 451 PA. 481, 303 A.2D 486 (1973).

IN THE PRESENT CASE THE INFORMER WAS NOT AN

ANONYMOUS ONE BUT A FRIEND OF THE DEFENDANT WHOSE NAME IS SHELLY KNOX AND THIS NAME WAS SUPPLIED AT THE SUPPRESSION HEARING (S.N.T. 59). FURTHER, THE DETECTIVE WAS SUPPLIED THE UNDERLYING CIRCUMSTANCES FROM WHICH THE INFORMER CONCLUDED THE SUSPECT DEFENDANT DID THE SHOOTING. THE DEFENDANT DECLARED AGAINST HIS PENAL INTEREST THAT HE SHOT SPINKS THE PREVIOUS NIGHT, AND THUS THE INFORMANT HAD PERSONAL KNOWLEDGE OF THE CRIME ITSELF. THE INFORMANT FURTHER TOLD THE DETECTIVE THAT THE INSTRUMENT USED IN THE SHOOTING, AS TOLD HIM BY DEFENDANT, WAS A .22 CALIBER SINGLE SHOT RIFLE AND THAT HE, THE INFORMER, KNEW THAT IT HAD BEEN RECOVERED BY THE POLICE AT THE TIME OF THE ARREST OF ONE JAMES DAVIS, WHO LIVED CLOSE TO THE SHOOTING SCENE. THE DETECTIVE THEN CHECKED WITH THE BALLISTICS UNIT OF THE PHILADELPHIA POLICE DEPARTMENT AND LEARNED THAT IN FACT THEY HAD SUCH A RIFLE AT THE TIME JAMES DAVIS WAS ARRESTED PRIOR TO DEFENDANT'S ARREST.

ALL OF THE FOREGOING INFORMATION WOULD HAVE BEEN SUFFICIENT TO MEET THE TWO-PRONG TEST PROVIDED IN SPINELLI V. UNITED STATES, 393 U.S. 410, 89 S.CT. 584 (1969) AND IN THE CASE OF THE ANONYMOUS TIPSTER OF THE BETRAND APPEAL, SUPRA.

THIS COURT AGREES WITH JUDGE DELLA PORTA'S DENIAL OF THE MOTION TO SUPPRESS THE STATEMENT AND HIS HOLDING IT ADMISSIBLE.

AS ERROR AT TRIAL REQUIRING CORRECTION BY NEW TRIAL, THE DEFENDANT ASSIGNS DENIAL OF HIS REQUEST TO HAVE THE FOLLOWING QUESTION ASKED ON VOIR DIRE:

> "III. IF THERE IS A QUESTION OF WHICH PERSON TO BELIEVE, WOULD YOU TEND TO BE INFLUENCED BECAUSE (2) ONE PERSON WAS A POLICE OFFICER AND THE OTHER WAS A CIVILIAN?" (N.T. 2-49).

THE EXAMINATION OF JURORS UNDER VOIR DIRE IS SOLELY FOR THE PURPOSE OF SECURING A COMPETENT, FAIR, IMPARTIAL AND UNPREJUDICED JURY. ITS PURPOSE IS NOT TO PROVIDE THE DEFENDANT WITH A BETTER BASIS UPON WHICH TO USE HIS PEREMPTORY CHALLENGES. COMMONWEALTH V. LOPINSON, 375 PA. 518, 100 A.2D 467 [427, PA. 284, 234 A.2D 552]; COMMONWEALTH V. BIEBIGHAUSER, 450 PA. 336, 300 A.2D 70.

THE INQUIRY ON VOIR DIRE RELATIVE TO THE ATTITUDE OF PROSPECTIVE JURORS AS TO THE TESTIMONY OF A POLICE OFFICER VIS A VIS THAT OF A CIVILIAN MAY BE PROPER FOR A DEFENDANT CANNOT BE TRIED FAIRLY BY A JUROR WHO GIVES UNQUALIFIED CREDENCE TO A POLICEMAN SIMPLY BECAUSE HE IS SUCH BY OCCUPATION. RECOGNIZING THIS, IN ACCORDANCE WITH HIS UNVARYING PRACTICE, THE TRIAL

JUDGE TOOK GREAT PAINS TO INSTRUCT ON THIS POINT IN HIS PRELIMINARY INSTRUCTIONS --ALL WITNESSES ARE TO BE TREATED EQUALLY AS TO CREDIBIILITY REGARDLESS OF OCCUPANTION. COUNSEL FOR DEFENDANT WAS FREE TO ASK, AS THE COURT DID ON MANY OCCASIONS, WOULD THE VENIREMAN FOLLOW THESE INSTRUCTIONS - INCLUDING THAT AS TO POLICEMEN'S TESTIMONY, BUT DID NOT CHOOSE TO DO SO. THE COURT TOLD COUNSEL HE COULD ASK ALL VENIREMEN IF THEY WOULD FOLLOW THE COURT'S INSTRUCTIONS (N.T. 3).

INSTEAD HE WISHES TO ASK AN IMPROPER QUESTION WHICH WOULD SET UP A STANDARD OF THE LAW CONTRARY TO WHAT THE COURT'S INSTRUCTIONS PROVIDED.

AS SET FORTH IN BROWN V. UNITED STATES, 338 FED.2D 543, THE COURT SAID "IF THE QUESTION IS PUT, IT SHOULD INCLUDE WHETHER THE JUROR WOULD TEND TO GIVE EITHER MORE OR LESS CREDENCE BECAUSE OF THE STATUS OF THE OFFICER."

THE DEFENDANT ALSO GROUNDS HIS MOTION FOR NEW TRIAL ON THE OVERRULING OF HIS OBJECTION TO THE TESTIMONY OF THE WITNESS WHO TESTIFIED AS TO HOW THE EVIDENTIARY RIFLE WAS RECOVERED BY OFFICER JAMES HARRIS ON OCTOBER 14, 1973 (N.T. 254 ET SEQ.), OF HIS ARREST OF FOUR YOUNG MEN IN A SPEEDING CAR FROM WHICH THE RIFLE WAS THROWN AS IT WAS PURSUED AT RIDGE AVENUE

AND CALUMET STREET ON OCTOBER 14, 1973. OFFICER HARRIS TESTIFIED TO HIS PURSUIT OF THE AUTOMOBILE, THE DISCARDING OF THE RIFLE BY ITS OCCUPANTS AND ITS RECOVERY, IDENTIFIED AT TRIAL AS C-7, THE STOPPING OF THE CAR AND ARREST OF THE OCCUPANTS, THREE OF WHOM RESIDED NEAR 32ND AND BERKS STREETS, AND ONE OF WHOM WAS JAMES DAVIS, 15 YEARS OLD AND RESIDENT OF 1926 NORTH 32ND STREET, PHILADELPHIA, PA. AS RELATED BEFORE THIS WAS IDENTIFIED BY THE POLICE BALLISTICIAN TO BE THE SAME GUN USED TO SHOOT AND KILL MR. SPINKS, THE DECEDENT IN THIS CASE. IT IS ALSO TO BE RECALLED THAT THE DEFENDANT IN HIS STATEMENT TO THE INTERROGATING DETECTIVE KANE, SUBSEQUENT TO HIS ARREST, SAID THAT HE SHOT "CHUCK" OR JAMES SPINKS AND THE DAY AFTER GAVE THE GUN (DESCRIBED AS SIMILAR TO THE C-7 RIFLE) TO SOMEONE AND THAT THIS GANG GUN (HE BEING A GANG MEMBER) HAD BEEN RECOVERED BY THE POLICE WHEN SOME BOYS WERE ARRESTED WITH IT (N.T. 254-57).

THE COINCIDENCE AND SIMILARITY OF HIS ACCOUNT OF HIS DISPOSITION OF THE RIFLE HE USED TO SHOOT MR. SPINKS AND RECOVERY OF A SIMILAR TYPE .22 CALIBER RIFLE FROM BOYS, ONE OF WHOM LIVED AROUND THE CORNER FROM WHERE HE LIVED AND WHERE HE SHOT DECEDENT, IS TOO COMPELLING NOT TO HAVE BEEN SUBMITTED TO THE JURY, TO AID, ALBEIT CIRCUMSTANTIALLY, TO HELP THEM DETERMINE

THE TRUTH OF THE MATTER.

FINALLY, THE DEFENDANT ASSERTS AS PREJUDICIAL ERROR THE ADMISSION OF OFFICER PAUL STANLEY'S TESTIMONY AT TRIAL THAT IN 1972 AND 1973 AS A POLICEMAN HE WAS ASSIGNED TO THE GANG CONTROL UNIT, NORTH CENTRAL DIVISION (ENCOMPASSING THE SHOOTING SCENE), HIS KNOWLEDGE OF THE DEFENDANT AND JAMES DAVIS IN 1972 AND 1973, AND OF SEEING THEM TOGETHER IN THE SAME AREA AND DURING THE SAME PERIOD OF TIME (N.T. 258-261). THIS LIKEWISE IS PART OF THE CIRCUMSTANTIAL MOSAIC THE COMMONWEALTH CONSTRUCTED IN PROOF OF ITS CASE. DEFENDANT ASSIGNS NO REASON OR AUTHORITY IN SUPPORT OF HIS REASON FOR THE INADMISSIBILITY OF THIS EVIDENCE EITHER.

CAREFULLY CONSIDERED, THE GROUNDS ADVANCED BY DEFENDANT FOR EITHER THE MOTION IN ARREST OF JUDGMENT OR NEW TRIAL ARE INSUFFICIENT, IN THIS COURT'S VIEW, TO REQUIRE THE GRANT OF EITHER MOTION.

BY THE COURT:

/s/ THEODORE B. SMITH, JR.
THEODORE B. SMITH, JR., J.

DATED: AUGUST 17, 1976